

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

ANJUMAN-I-IMDAD QARZA
BAHAMI, THROUGH MAHAN
CHAND, Liquidator

} (DEFENDANT)
Appellant,

1937
Feb. 2.

versus

MEHR DIN (PLAINTIFF)
AND OTHERS (DEFENDANTS)

} Respondents.

Civil Appeal No. 111 of 1936.

Co-operative Societies Act (II of 1912), S. 23: 'Debts of a registered Society' — meaning of — S. 42 (2) (b) — Liquidator — whether can proceed summarily against a debtor of the Society — Jurisdiction of Civil Courts — where liquidator has acted beyond his powers.

Held, that the words 'debts of a registered Society' as used in section 23 of the Co-operative Societies Act, refer only to those debts which the Society owes and not to those which are owed to the Society.

Dhanpat v. Anjuman Dehi Alo Mahar (1), approved.

Held also, that under section 42 (2) (b) of the Co-operative Societies Act the Liquidator has no jurisdiction to determine the liability of a person in relation to a debt, alleged to have been owed by him to the Society, and if he does so, his act is *ultra vires*.

And further, that the jurisdiction of the Civil Courts is ousted in those cases alone, where it is held that the act of the Liquidator was within section 42, but in all cases where it is found that the liquidator has exceeded his powers and conducted himself in a manner not permissible under the law, the Civil Courts can go into the matter in order to determine the legality of the order.

Case law, discussed.

Held therefore, that in the present case, as the plaintiff was proceeded against as a debtor to the Society and not as a member contributing to the assets of the Society, the

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liquidator could not proceed against him in the summary manner permitted under section 42 (2) (b) of the Act and the plaintiff was entitled to a decree in the Civil Court.

First appeal from the order of Mr. A. Rahman, Senior Subordinate Judge, Amritsar, dated 30th January, 1936, reversing that of Sardar Ganda Singh Bedi, Subordinate Judge, 4th Class, Amritsar, dated 8th August, 1935, and remanding the case for decision on the merits.

ROOP CHAND, for Appellant.

HEM RAJ MAHAJAN, for Respondents.

(Case referred to a Division Bench by Jai Lal J.).

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—This appeal has been referred to us by Jai Lal J. as in his opinion the question of law involved in the case is not free from difficulty and the authorities relating thereto are conflicting.

The facts are these. One Mehr Din was a member of a Society registered under the Co-operative Societies Act, 1912, and named “*Anjuman-i-Imdad Qarza Bahami Bafindagan, Katra Hakimian, Amritsar*” (hereinafter called the Society). Similarly Mehraj Din and Lal Din were members of that Society. Mehraj Din raised some loans from the Society and Mehr Din stood surety for him. In 1923, Mehr Din left for Iran and returned in 1925. He then applied to the Society that his name be struck off the register and that he may be discharged from his security bond. In pursuance of this application his name was struck off and Lal Din was accepted as surety in his place. Mehr Din again left for Iran and returned in 1931. In 1932, the registration of the Society was cancelled and one *Thakar Mahan Chand* was appointed liquidator to wind up the Society. On the 15th June, 1933,

the liquidator made an order holding Mehr Din as well as Mehraj Din and Lal Din liable for a sum of Rs.1,500, which was owing to the Society from Mehraj Din. The liquidator then took out execution of the decree and got Mehr Din's house attached. Mehr Din submitted objections to the executing Court but they were dismissed.

On the 22nd of May, 1935, Mehr Din instituted a suit for a declaration that no liability could legally be fixed upon him on account of his security bond, as it had been cancelled long before and that consequently the order of the liquidator was illegal and unenforceable at law. The trial Judge dismissed the suit holding that the jurisdiction of the Civil Courts was barred in this matter. He mainly relied on a judgment of Bhide J. reported as *Muhammad Barkat Ali Khan v. Anjuman Imdad Qarza* (1). The Senior Subordinate Judge on appeal referred to section 23 of the Co-operative Societies Act and reversed the judgment of the trial Judge on the ground that the liquidator could not ignore the clear provisions of law contained in that section. The Society preferred a further appeal to this Court which has been, as stated above, referred to us for decision.

We may say at once that neither the trial Judge nor the Senior Subordinate Judge had a clear conception of the law applicable to the facts of the case. The trial Judge based his decision on a judgment of Bhide J., but he obviously misunderstood the true import of that decision and did not appreciate the distinction that clearly existed between the facts of that case and those of the case before him. That case related to section 23 which deals with the liability of past

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members for the debts of a registered Society and not with debts due to the registered Society and the plaintiff in that case was contesting the liability imposed upon him by the liquidator in relation to the contributions to the assets of the Society falling within the definition of section 42 (2) (b). The Senior Subordinate Judge also ignored this distinction while discussing the maintainability or otherwise of the suit in the light of section 23 of the Act.

It should be clearly borne in mind that the words "debts of a registered society" as used in section 23 of the Co-operative Societies Act, 1912, refer only to those debts which the Society owes and not to those which are owed to the Society. This distinction was brought into prominence by Sale J. in *Dhanpat v. Anjuman Dahi Alo Mahar* (1) and in view of the clear wording of the section we have no hesitation in holding that the construction put upon these words in that judgment was the only legal construction that could be put.

Further, in section 19 of the Act, debts due from members or past members are described as "outstanding demand due to the Society from a member or past member." Similarly in section 20, while referring to the liabilities of members or past members, the words used are "any debt due from such member or past member to the Society." Section 36 contemplates debts due by a Society and these are the debts which are referred to in sections 23 and 24 of the Co-operative Societies Act.

Adverting now to section 42 (2) (b); the word 'contribution' in Murray's Oxford Dictionary is said to mean "payment by each of the parties interested of his share in any common loss or liability."

Evidently, therefore, a debt owed by an individual member to the Society will not be such a payment in any circumstances. Calvert in his Law and Principles of Co-operation has defined 'contribution' as used in section 42 (2) (b) in the same manner. At page 174 of his book he says "contribution" usually means the amount payable by a member as such and does not include debts payable to the Society. It is the unpaid portion of the liability. In a limited liability Society with fully paid up capital, it is nil unless it be held "that dividends have been paid without being earned, in which case perhaps these might be recovered." At page 176 of the same book he observes: "Outside Bombay and Madras it is not competent for the liquidator to make a decree under clause (2) (b) for loans owed by a member. There is nothing corresponding to section 186, Indian Companies Act, empowering a Court after making a winding up order, to order any contributory to pay any money due from him to the Company exclusive of any money payable by virtue of any call." Moreover, rule 26 of the rules made by the Local Government under section 43, sub-section (1) of the Co-operative Societies Act, II of 1912, which deals with the winding up, leaves no doubt in the matter. In sub-rule (c) it is provided that "if necessary, the liquidator may institute suits for the recovery of sums due to the Society." In sub-rule (d) it is laid down that "after recovery of these dues of the society and the realisation of the contribution and the costs of liquidation from the members and past members the liquidator shall wind up its affairs". Comparing this rule with section 23 and section 42 (2) (b) and (d), it would be obvious that 'dues of the society' are a thing apart from 'debts of the society' as well as from 'contribution' as contemplated by rule (b) and

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'costs' as contemplated in (d). Sub-rule (i) of rule 26 further makes the matter sufficiently clear. It says that "if the Civil Court is unable to recover the sum assessed against any member or members, the liquidator may frame subsidiary order or orders against any other member or members to the extent of the liability of each for the debts of the society, until the whole amount due from the members is recovered." It cannot be conceived that it was intended that any member of the Society should be compelled to pay any debt due by any member other than himself.

It is clear, therefore, that under section 42 (2) (b) the liquidator had no jurisdiction to determine the liability of the plaintiff in relation to a debt alleged to have been owed by him to the Society and consequently his act was *ultra vires*.

The only question that now remains to be considered is whether in face of this finding a civil Court has jurisdiction to entertain the suit as lodged by the plaintiff. Various authorities have been cited at the bar and before we arrive at our own conclusion it would be necessary to refer to them at some length.

In the case reported as *Mukand Lal v. Liquidator, Malhotra Bank* (1), the question that arose for decision was whether the liquidator had power to determine the question of membership and whether his decision on that point was open to challenge in a civil Court or not. A Division Bench of this Court came to the conclusion that section 42 of the Co-operative Societies Act did not confer any power upon the liquidator to determine the question of membership and as he had assumed jurisdiction over persons who were not and had never been members of this Society, the matter could be raised in civil Courts.

(1) I. L. R. (1933) 14 Lah. 703.

In *Muhammad Barkat Ali Khan v. Anjuman Imdad Qarza* (1), the question related to the amount of contribution payable by a past member and as it fell directly under section 42 (2) (b), a learned Judge of this Court held that civil Courts had no jurisdiction to go into the matter.

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In *Hira Nand v. Anjuman Imdad-i-Qarza* (2), the question at issue was whether Civil Courts had jurisdiction in a case in which the relief claimed was that no award could be obtained against the plaintiffs, after an award had once been given and regarded as satisfied by the executing Court. A learned Judge of this Court held that as the dispute had ended by the order of the executing Court, it was not open to the Society to take further action in the matter by having recourse to the Registrar and the subsequent arbitration proceedings. On this ground, he came to the conclusion that the jurisdiction of the civil Court was not ousted.

In *M. A. Koyal v. Bhond Lal* (3), the learned Judicial Commissioner of Nagpur held that a liquidator of a Society had no power to proceed against anybody and everybody irrespective of the fact that he had ever been a member of the Society, and section 42 (2) (b) could not be so construed as to oust the jurisdiction of the civil Courts in cases where the liquidator passed an order against a person who was not a member of the Society.

In *Balaji Sao v. Anand Prasad* (4), the same learned Judicial Commissioner had remarked as follows :—

“ If we can assume for a moment that the revenue authorities had acted *ultra vires* and had attached and

(1) 1935 A. I. R. (Lah.) 330.

(2) 1935 A. I. R. (Lah.) 631.

(3) 1931 A. I. R. (Nag.) 43.

(4) 1927 A. I. R. (Nag.) 217.

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sold the property which was not liable to be sold I do not think that the present suit would have been barred.”

In *Beni Madho Singh v. Tahsildar of Unao* (1), the liquidator had made an order under the provisions of section 42 (2) (b) and (d) directing certain members of the Society to contribute a certain sum towards its assets. A declaratory suit was thereupon instituted questioning the authority of the liquidator to determine the liability of officials as distinguished from members. The learned Additional Judicial Commissioner of Oudh held that the order being legal could not be attacked in the civil Courts.

In *Sadasheo v. Fadnavis* (2), the order made by the liquidator related to the debts due to the Society from its members. The Additional Judicial Commissioner, before whom the appeal was heard, in agreement with the Courts below, held that as the order of the liquidator related to the dissolution of a registered Society, it could not be impugned in a civil Court. It is significant that this judgment was neither referred to in *Balaji Sao v. Anand Prasad* (3), nor in *M. A. Koyal v. Bhond Lal* (4).

From the above analysis of these judgments it would be abundantly clear that the jurisdiction of the civil Courts was ousted in those cases alone where it was held that the act of the liquidator was within section 42 [cf. *Muhammad Barkat Ali Khan v. Anjuman Imdad-i-Qarza* (5), and *Beni Madho Singh v. Tahsildar of Unao* (1)] and in all those cases, where it was found that the liquidator had exceeded his

(1) (1918) 44 I. C. 353.

(3) 1927 A. I. R. (Nag.) 217.

(2) 1926 A. I. R. (Nag.) 379.

(4) 1931 A. I. R. (Nag.) 48.

(5) 1935 A. I. R. (Lah.) 330.

power and conducted himself in a manner not permissible under the law, it was unhesitatingly found that the civil Courts could go into the matter in order to determine the legality of the order.

It would also be evident that none of those cases except *Sadasheo v. Fadnavis* (1), related to the question at issue before us. The decision in the Nagpur case no doubt supports the contention raised on behalf of the Society, but with all respect to the Additional Judicial Commissioner responsible for that judgment we are constrained to remark that the question was not properly considered by him and his decision does not appear to us to be correct. It is merely based on the general consideration of the fact that every order of the liquidator in relation to the dissolution of a Society is covered by section 42 and hence sacrosanct. A conclusion expressed in such general terms we are not prepared to endorse and we are inclined to hold the same view, as was taken in a large majority of cases referred to above, *viz.*, that where the act of the liquidator is *ultra vires*, civil Courts can interfere.

In the case before us the plaintiff was proceeded against as a debtor to the Society and not as a member contributing to the assets of the Society. As such, the liquidator could not proceed against him in the summary manner in which he is permitted to do under section 42 (2) (b); his act, therefore, was clearly beyond his powers. In these circumstances we hold that the plaintiff was entitled to a decree, and we dismiss this appeal. The case will now go back to the trial Court to give effect to our order and to decree the claim. The plaintiff will get his costs throughout.

P. S.

Appeal dismissed.

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