

APPELLATE CIVIL.

Before Goldstream and Bhide JJ.

ANJUMAN DEHI (DEFENDANT) Appellant

versus

KEHAR SINGH (PLAINTIFF) Respondent.

Civil Appeal No. 813 of 1934.

Co-operative Societies Act, II of 1912, Section 43 (2) (l) and Rules 18 (i), (j) and (k) — Award made by arbitrator — allowed to run out of limitation — whether a second reference to arbitration competent — Suit to have second award declared void — whether lies.

K. S. owed money to a Co-operative Society. The dispute was referred to arbitration under the provisions of the Co-operative Societies Act and an award was made on 14th July, 1928, for payment of Rs.3,019 which was executed as a decree by a Civil Court. The last application for execution made on 8th December, 1928, was consigned to the record room after partial satisfaction of the decree, and as no further application was made within 3 years execution of the award became time-barred. A second reference to arbitration was then made by the Society and an award obtained for Rs.2,454 on 20th September, 1932. When the Society sought to execute the award K. S. raised an objection in the execution Court that it had been obtained by fraud and was a nullity, and under the direction of the Court instituted a suit in the Civil Court for a declaration that the award was not executable. The question for determination in the High Court was whether this suit was incompetent under rule 18 (j) framed under section 43 of the Act.

Held, that the suit was competent as the second award was clearly not one which could be passed within the scope of the Co-operative Societies Act and the rules made under it and was therefore not one to which rule 18 (j) was applicable.

Mohammad Sharif v. Union Bank, Ltd. (1) and *Hira Nand v. Anjuman Bank* (2), relied upon.

Dhanpat v. Anjuman Dahi Alo Mahar (1), dissented from.

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Held also, that the proceedings of the Executing Court are subject to the ordinary laws and if a Society neglects to execute an award within time, its right to have the award enforced is lost and rule 18 (k) itself precludes a second reference to arbitration in the circumstances of the present case, that is to say where the second award relates only to the recovery of the debt settled by the first award.

Second appeal from the decree of Mr. G. D. Khosla, District Judge, Gurdaspur, dated 14th April, 1934, reversing that of Lala Ishar Das, Subordinate Judge, 3rd Class, Gurdaspur, dated 23rd October, 1933, and granting the plaintiff a declaration, etc., as prayed for.

BADRI DAS, for Appellant.

EDMUNDS, Assistant Legal Remembrancer, and
KISHEN LAL KAPUR, for The Crown.

CHARANJIV LAL AGGARWAL, for Respondent.

COLDSTREAM J.—This appeal arises out of litigation between the Co-operative Society of Virk Talwandi in Gurdaspur District, and one of its members Kehar Singh.

Section 43 of the Co-operative Societies Act, 1912, the object of which, as stated in its preamble, is to promote thrift and self help among agriculturists, artisans, and persons of limited means, gives the Local Government power to make rules to carry out the purposes of the Act. The section also lays down in clause (l) of sub-section (2) that in particular, and without prejudice to the generality of this power such rules may provide that any dispute touching the business of a Society between a member of the Society

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and its Committee shall be referred to the Registrar for decision, or if he so directs, to arbitration, and may prescribe the mode of appointing an arbitrator and the procedure to be followed in proceedings before the Registrar or such arbitrator, and in the enforcement of the decisions of the Registrar or the awards of arbitrators.

In exercise of these powers the Local Government of this Province has framed rules requiring disputes touching the business of a Co-operative Society between a member and the Committee to be referred to the Registrar [rule 18 (a)], and authorising the Registrar to refer such disputes to an arbitrator [rule 18 (b)]. Rule 18 (i) gives any party aggrieved by an award the right to appeal to the Registrar within a month of the award, and rule 18 (j) provides that an award which has not been appealed against shall not, as between the parties to the dispute, be liable to be called in question by any civil or revenue Court, except on proof of the receipt of corrupt gratification by the arbitrator. Rule 18 (k) provides that an award shall, on application to a civil Court having local jurisdiction, be enforced in the same manner as a decree of that Court.

The facts giving rise to the present appeal are as follows :—

Kehar Singh owed money to the Co-operative Society of Virk Talwandi. The dispute was referred to arbitration and an award for the payment of Rs.3,019 was made by the arbitrator on the 14th July, 1928. The award was executed as a decree by a civil Court in accordance with the rules under the Act. The last application for execution was made on the

8th December, 1928. This was, consigned to the record room after partial satisfaction and as no further application was made within three years execution of the award became time barred.

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A second reference to arbitration was then made, so it is alleged by the Society, and an award was obtained for Rs.2,454 on 20th September, 1932. When the Society sought to execute the award, Kehar Singh raised an objection in the executing Court that it had been obtained by fraud and was a nullity. He was directed by the executing Court to establish his right in a civil Court, whereupon he instituted a suit in the Court of the Subordinate Judge, 3rd Class, Gurdaspur, for a declaration that the award was not executable and for an injunction against its execution by the Society.

The suit was dismissed, the Court holding that the rule 18 (j) made by the Local Government precluded a civil Court from entertaining the suit.

This decision was reversed on appeal by the District Judge who decreed the suit. His view was that the dispute between Kehar Singh and the Society had been settled by the first award, that therefore there was no dispute which could be referred to arbitration under the Act, that the award was therefore invalid, and that the civil Court had jurisdiction in such a case to entertain the suit and grant relief.

Against this judgment the Society appealed to this Court and it was contended before Bhide J. that the District Court was not correct in holding that rule 18 (j) was not a bar to the suit, there being no allegation that the arbitrator who gave the award in question had received corrupt gratification. In view of some

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apparent conflict of judicial decisions on the question whether the second award could be attacked by a civil action my learned brother referred the case for decision by a Division Bench. In his referring note he has expressed a doubt whether rule 18 (j) was within the authority given to the Local Government by section 43 of the Act, which does not expressly confer any power to restrict the right of a party to resort to a civil Court.

After hearing counsel at length, I am of opinion that this appeal must fail on the short ground that the second award was clearly not one which could be passed within the scope of the Co-operative Act and the rules made under it and was therefore not one to which rule 18 (j) was applicable.

I have no doubt that where an award given by an arbitrator is not one which could be given under the provisions of the Act it is open to a person aggrieved to obtain a declaration restraining its enforcement against him. This Court has more than once given a declaration in similar circumstances. In *Mohammad Sharif v. Union Bank, Ltd.* (1) a Division Bench, of which my learned brother Bhide was one of the Judges, held that an award made in a case where one of the disputants was not a member of the Society concerned was invalid, the submission of the dispute to the Registrar not being within the scope of the Act. Again, in *Hira Nand v. Anjuman Bank* (2) it was decided by Agha Haidar J. that when an award has been held by the executing Court to have been fully satisfied there can be no dispute left to be referred to arbitration and that a suit will lie to have a second

(1) 1932 A. I. R. (Lah.) 53.

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

award on the same matter declared unexecutable. For the appellant Society reliance is placed upon *Dhanpat v. Anjuman Dahi Alo Mahar* (1) a ruling by a Single Judge of this Court. The judgment is directly to the point, but with due respect I am unable to agree with the view adopted by the learned Judge in that case. It seems to me clear that rule 18 (k) itself precludes a second reference to arbitration in the circumstances of the present case. The dispute between Kehar Singh and the Committee was determined by the award of 14th July, 1928. The subsequent 'dispute,' alleged by the Society to have been referred to arbitration, was one which under the rules could only be decided by the executing Court, for it related wholly to the discharge of the award. The proceedings of the executing Court are subject to the ordinary laws and if a Society neglects to execute an award within time, its right to have the award enforced is lost, and that is an end of that dispute. It is admitted that in this case the second award related only to the recovery of the debt settled by the first award, the only disagreement alleged to exist between the parties being on the question whether the unpaid balance of the amount awarded by the arbitrator on the 14th July, 1928, should or should not be paid.

I do not see force in the argument advanced by appellant's counsel that apart from the provisions of rule 18 (j) a suit of the present kind is barred by the provisions of rule 18 (i). There is no doubt ample authority for the proposition that where an Act of the Legislature gives power to any person for a public purpose from the exercise of which an individual may

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receive an injury, and also provides a mode of redress, the jurisdiction of the civil Courts is excluded. But that principle will have no application where there was no matter in existence with which the person empowered was authorised to deal, and no ruling has been cited by appellant's counsel supporting the view that where a tribunal appointed by an Act for a special purpose has adjudicated on a matter upon which under the provisions of the Act it had not authority to adjudicate, the civil Courts cannot give relief. If a civil Court can give relief I cannot see why it should not do so either before the aggrieved person has exhausted the remedies provided by the Act against the action of the tribunal or after he has done so.

Taking the view that rule 18 (j) has no application I see no necessity for deciding here the question whether the rule is or is not *ultra vires* of the Local Government. This question is not free from difficulty. As has been pointed out in my learned brother's order of reference, a power to exclude recourse to civil Courts for redress against an award is at least as important as the power to make rules determining in what cases an appeal shall lie from the orders of a Registrar and prescribing the procedure in disposing of such appeals, but although the latter power is specifically given in clause (5) of section 43, there is no mention of a power to exclude the jurisdiction of the civil Courts. The argument that had the intention been to allow the Local Government to lay down by rules that a person cannot on any grounds attack an award by an action in the civil Courts this intention would have been distinctly expressed is therefore not without force. The argument is

strengthened by the fact that under the Government of India Act (section 80-A and the Devolution Rules) the Provincial Legislature itself cannot enact laws affecting civil law and procedure without the previous sanction of the Governor-General, and by the fact that the Legislatures of other Provinces have incorporated in their Acts provisions barring interference by the civil courts. The question is obviously one which in the interests of all concerned and in view of the desirability of restricting unnecessary litigation calls for serious consideration by the Legislature.

For the reasons stated I would dismiss this appeal with costs.

BHIDE J.—I agree.

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Appeal dismissed.