

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

KRISHNAJI SHRIDHAR BARDE, APPLICANT *v.* MAHADEO SAKHARAM PATIL, OPPONENT*.

1921.

June 21.

Civil Procedure Code (Act V of 1908), section 39—Decree—Execution—Transfer of decree—"Court which passed a decree"—Co-operative Societies Act (II of 1912), section 43—Co-operative Societies Rules, 1919—Award made under the rules—Application to enforce the award.

An arbitrator appointed by the Registrar of Co-operative Societies made his award at Poona. Under the rules passed under section 43 of Co-operative Societies Act, 1912, the award was enforceable as a decree of a Civil Court. The party in whose favour the award was passed applied to the Court of Small Causes at Poona for a certificate transferring the decree for execution to Court of Small Causes at Bombay. The Subordinate Judge refused to grant the certificate on the ground that under section 39 of the Civil Procedure Code, 1908, it was only the Court which had passed the decree that could give a certificate under that section. The applicant having applied to the High Court

Held, that inasmuch as the Poona Court could execute the decree as if it had passed it, it could transfer that decree under section 39 of the Procedure Code, 1908.

APPLICATION under Extraordinary Jurisdiction against the order made by H. V. Chinmulgund, Small Cause Court Judge at Poona.

Execution proceedings.

The opponent Mahadeo was a debtor of the petitioner who represented the Chaturshingi Co-operative Credit Society, Limited, Poona and the other opponents were sureties for the debt.

Disputes having arisen between the opponents and the petitioner, the Registrar of the Co-operative Societies appointed an arbitrator to decide the dispute according to the rules framed under section 43 of the Co-operative Societies Act, 1912.

* Civil Extraordinary Application No. 80 of 1921.

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The arbitrator made his award. The petitioner wanted to enforce it against Mahadeo who had gone to Bombay and for this purpose he applied to the Court of Small Causes at Poona for a certificate transferring the decree for execution at Bombay to the Court of Small Causes at Bombay.

The Subordinate Judge dismissed the application on the following grounds:—

“The Court which passed the decree has to give a certificate under section 39, Civil Procedure Code. As the decree has not been passed by this Court it cannot issue the certificate and send the decree to another Court under Order XXI, Rule 6, Civil Procedure Code.”

The petitioner applied to the High Court.

J. R. Gharpure, for the applicant.

No appearance for the opponent.

MACLEOD, C. J.:—In this case an award was made by an arbitrator in a dispute between certain parties, the arbitrator being appointed by the Registrar of Co-operative Societies as provided by the rules under the Co-operative Societies Act II of 1912. As one of the opponents resided in Bombay, or had gone to Bombay, the petitioner applied to the Court of Small Causes at Poona for a certificate transferring the decree for execution at Bombay to the Court of Small Causes at Bombay. The rules passed under section 43 of the Co-operative Societies Act provide under Rule 34 that the decisions and awards under Rule 31 shall, on application to any civil Court having local jurisdiction, be enforceable in the same manner as a decree of such Court.

The learned Judge dismissed the application on the ground that under section 39 of the Civil Procedure Code, it was only the Court which had passed the decree that could give a certificate under that section. It seems to us that is a somewhat narrow construction

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of section 39, as the petitioner could apply to the Poona Court to execute the decree as if the Poona Court had passed it, and the next step would be that if the Poona Court could execute the decree as if it had passed that decree, then it could transfer that decree under section 39, Civil Procedure Code. Therefore, the Rule will be made absolute. The order dismissing the application with costs must be set aside, and the petitioner's costs will be costs in the execution.

We may add that Rule 34 is not very clearly worded. If it means that a party who has obtained an award can execute it in a number of different Courts, that would certainly be contrary to the scheme of the Civil Procedure Code which provides that the Court which passes the decree shall execute it, and if required, shall send the decree for execution to another Court under the provisions of section 39, with the result that the execution of the decree really proceeds under the Court which passes the decree, whereas if the decree is being executed in half a dozen Courts, it would be impossible for those Courts to know what had been done outside their own jurisdiction.

Rule made absolute.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Sook.

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SUNDER SPINNER AND ANOTHER (ORIGINAL DEFENDANTS), APPLICANTS v.
MAKAN BHULA (ORIGINAL PLAINTIFF), OPPONENT^c.

Summons—Service by registered post—Ex parte decree—Defendant denying delivery of summons—Retrial—Practice.

^c Civil Extraordinary Application No. 34 of 1921.