1969 Present: Samerawickrame, J., and Pandita-Gunawardene, J.

ATCHUVELY MULTI-PURPOSE CO-OPERATIVE SOCIETY LTD., Appellant, and S. BALASINGHAM, Respondent

S. C. 106/67 (Inty.)—D. C. Jaffna, 268/A

Co-operative Societies Ordinance, as amended by Act No. 27 of 1964—Section 53A (4)— Enforcement of an award thereunder—Seizure and sale of defaulter's dwelling house—Validity—Difference, in execution proceedings, between a decree of Court and an award made under the Co-operative Societies Ordinance—Civil Procedure Code, as amended by Act No. 49 of 1958, ss.217, 218 (n).

When a sum of money due under an award made under the Co-operative Societies Ordinance is sought to be recovered in terms of the provisions of section 53A (4) of the Co-operative Societies Ordinance, the dwelling house of the defaulter is liable to be seized and sold in pursuance of the writ issued to the Fiscal by the District Court. In such a case, the defaulter is not entitled to the benefit of the provise to the amended section 21S of the Civil Procedure Code because what is sought to be enforced is not a decree or order of a Court but an award made under the Co-operative Societies Ordinance. Moreover, according to section 53A (4) of the Co-operative Societies Ordinance, the only sections of the Civil Procedure Code which are applicable to execution proceedings relating to an award are sections 226 to 297.

## APPEAL from an order of the District Court, Jaffna.

A. C. Gooneratue, Q.C., with S. Sharvananda, for the petitioner-appollant.

No appearance for the respondent-respondent.

Cur. adv. vult.

## July 11, 1969. PANDITA-GUNAWARDENE, J.-

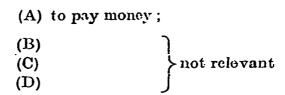
The provision in the Co-operative Societies Ordinance which stipulates for enforcement of awards is Section 53A (Co-operative Societies (Amendment) Act 27 of 1964).

Section 53A (4) empowers the Rogistrar upon an award being made in the matter of a dispute that a sum of money due by one party to another has not been paid, to issue a certificate to the District Court "and the Court shall thereupon direct a writ of execution to issue to the Fiscal authorizing and requiring him to seize and sell all or any of the property movable and immovable of the defaulter, or such part thereof as he may deem necessary for the recovery of such sum, and the provisions of sections 226 to 297 of the Civil Procedure Code shall, mutatis mutandis, apply to such seizure and sale".

In this case upon application made to him under section 53A (4) the learned Additional District Judge directed writ of execution to issue to the Fiscal for seizure and sale of properties belonging to the respondent for default of payment on the award. Pursuant to the Court's direction the Fiscal seized the dwelling house of the respondent.

The respondent's contention is that in view of section 218 Civil Procedure Code as amended by section 2 (2) of Act No. 49 of 1958, his dwelling house is not liable to seizure and sale. The learned Additional District Judge has accepted this contention and ordered that the property seized be released from seizure. The appellant, the Atchuvely Multi-Purpose Co-operative Society Ltd., appeals from this Order.

Chap. 22 Civil Procedure Code deals with executions. Section 217 enacts, "A decree or order-of-court may command the person against whom it operates—



Under section 218 where the decree to pay money remains unsatisfied the judgment-creditor is entitled to seize and sell, among others, the immovable property of the judgment-debtor. There is however the proviso to this section which gives a list of items of property which shall not be liable for seizure or sale. By section 2 (2) of Act 49 of 1958, the dwelling house of the judgment-debtor has been added to the list of excepted property.

It has been argued for the appellant that section 218 and its amendment only applies to seizure and sale in enforcement of a decree or order of Court; that what is sought to be enforced here is not a decree or order of a Court but an award under the Co-operative Societies Ordinance.

It would appear to me that there is substance in this argument. In terms of section 53A (4) of the Co-operative Societies Ordinance the Court does not enter a decree or make any order upon the award submitted to it. The Court has no option but to direct that writ of execution do issue, not upon a decree or order entered by Court but on the award filed before it. In that view of the matter the provise to section 218 cannot be said to apply. It is pertinent to note in this regard that section 53 A (4) (Co-operative Societies Ordinance) expressly provides that sections 226 to 297 Civil Procedure Code shall apply. These would, therefore, be the only sections of the Civil Procedure Code in the Chapter dealing with "executions" which would become operative. They are sections which

deal with, "the duties of the Fiscal on receiving writ: modes of soizuro"; "claim to property seized: " and "sale of movable and immovable property:".

Had the Legislature intended that the judgment-debtor be entitled to the benefit of the provise to section 218 Civil Procedure Code in the enforcement of an award under section 53 A (4) (Co-operative Societies Ordinance) it would, I expect, have so provided. In the absence of such a provision I find myself unable to agree with the order of the learned Additional District Judge releasing the respondent's property from seizure. The order directing the Fiscal to release the property from seizure is set aside.

The appeal is allowed with costs.

SAMERAWICKRAME, J.—I agree.

Appeal allowed.