

1952

Present : Gratiaen J. and Gunasekara J.

SANMUGAM, Appellant, and BADULLA CO-OPERATIVE STORES UNION, LTD., Respondent

S. C. 300—D. C. Badulla, 8,434

Co-operative Societies Ordinance (Cap. 107), s. 45 (1)—Dispute between co-operative society and an officer—Jurisdiction of District Court to try it.

Section 45 (1) of the Co-operative Societies Ordinance ousts the jurisdiction of the ordinary Courts over a dispute between a registered co-operative society and any officer of the society when the dispute touches the business of the society.

APPEAL from a judgment of the District Court, Badulla.

E. B. Wikramanayake, Q.C., with *A. Nagendra*, for the plaintiff appellant.

H. W. Jayewardene, for the defendant respondent.

Cur. adv. vult.

June 11, 1952. GUNASEKARA J.—

The defendant-respondent is a registered co-operative society. The plaintiff-appellant was appointed as its manager on April 7, 1946, and acted as such till May 3. He instituted this action on February 6, 1947, claiming a sum of Rs. 900 as arrears of salary for a period of nine months from May 7, 1946 or, alternatively, as damages for wrongful dismissal on May 3, and for a second cause of action, the return of a sum of Rs. 2,000 deposited by him "as security for faithfully accounting to the defendant for all monies and goods belonging to the defendant and received by him in his capacity as Manager of the defendant". The defendant society denied that any sum was due to the plaintiff and alleged that he had been lawfully dismissed "on account of gross mismanagement of the affairs of the society and misappropriation of cash", and that the sum misappropriated by him was Rs. 3,321.06. Crediting him with the Rs. 2,000 deposited as security the defendant claimed in reconvention a sum of Rs. 1,321.06. The defendant also pleaded that the District Court had no jurisdiction to hear and determine the action in view of the provisions of section 45 (i) (c) of the Co-operative Societies Ordinance (Cap. 107.)

The trial was laid by pending the determination of certain other proceedings and was eventually taken up on May 15, 1950, when the defendant's claim in reconvention was abandoned. The issue of

jurisdiction was tried as a preliminary issue and the learned District Judge dismissed the plaintiff's action with costs, holding that the Court had no jurisdiction to try it. The plaintiff appeals against this order.

Section 45 of the Co-operative Societies Ordinance provides, in sub-section (1), that if any dispute touching the business of a registered society arises between the society and any officer of the society, such dispute shall be referred to the Registrar of Co-operative Societies for decision. Under sub-section (2), the Registrar may decide the dispute himself or refer it for disposal to an arbitrator or arbitrators, and sub-section (3) provides for an appeal from their award to him. In terms of sub-sections (4) and (5) the decision of the Registrar, or the award of the arbitrator or arbitrators if no appeal is taken to the Registrar, "shall be final and shall not be called in question in any civil court". (Section 45 of the Ordinance was amended by the Co-operative Societies (Amendment) Act, No. 21 of 1949, while this action was pending in the District Court, and the Co-operative Societies (Special Provisions) Act, No. 17 of 1952, came into operation before the hearing of the appeal in this Court. It is not necessary for the decision of the appeal, however, to consider the effect of these enactments.) It was contended for the appellant that the dispute between the parties was not one touching the business of the society and therefore not a dispute to which the provisions of section 45 are applicable; and that even if it was, the court had jurisdiction to try the action if the dispute had not been the subject of a decision or award under that section.

Mr. Wikramanayake cited the cases of *Meera Lebbe v. Vannarponnai West Co-operative Society*¹ and *Mohideen v. Lanka Matha Co-operative Stores Society, Ltd.*² as supporting a view that neither the society's claim against the appellant for misappropriating its funds nor the appellant's claim against the society for salary or damages involved a dispute touching the business of the society. In the first of these cases a member of a co-operative society who had functioned for some time as the manager of its stores sued the society for the return of a sum of money deposited by him as security, and the society pleaded that he had misappropriated a larger sum and it was entitled to a set-off against his claim. The society also pleaded that the action was barred by the provisions of sub-section (1) of section 45 relating to disputes between a society and any officer of the society and similar provisions contained in the same sub-section relating to disputes between a society and a member of the society. It was held that there was no evidence to show what were the functions of the plaintiff as manager of the stores and that in the absence of such evidence the dispute could not be regarded as a dispute between the society and an officer of the society; and that although the plaintiff was a member of the society the dispute was not between the society and himself in his capacity of a member. In the second case a member of a co-operative society who had been employed by it as a watchman sued the society for arrears of salary and damages for wrongful dismissal. The only question considered was whether the dispute between the parties could be regarded as one between the society and a member of the

¹ (1947) 48 N. L. R. 113.

² (1947) 48 N. L. R. 177.

society and it was held that it could not. In neither of these cases was it decided that the dispute was not one touching the business of the society.

The defendant society in the present case is a co-operative stores union and the plaintiff, according to his own description of his functions, was its "chief executive officer". The learned District Judge finds upon the evidence that the plaintiff in his capacity of manager was in charge of the stock and decided what should be bought, made payments and purchased goods on behalf of the society, received payments made to the society, and controlled its staff of employees, and that it was his duty to control, direct and regulate the business of the society. The learned Judge also finds that by May 2, 1946, there had arisen a dispute between the parties as regards the plaintiff's responsibility for a shortage in the society's cash alleged to have been discovered by an inspector of co-operative societies on April 25. These findings are supported by the evidence and have not been canvassed. In the light of the District Judge's findings as to the nature of the plaintiff's functions as the society's manager, particularly in respect of the receipt and expenditure of its funds in the transaction of its business, it seems quite clear that the dispute is one touching that business and is therefore one to which section 45 applies. It is this dispute that the District Court was invited to try, for it is the decision of this dispute that must determine the question of the society's liability to pay the plaintiff any part of the sum claimed by him.

The contention that section 45 of the Ordinance has not the effect of ousting the jurisdiction of the courts over the disputes referred to in sub-section (1) is based on a view that the jurisdiction of the courts cannot be taken away except by express words. It is pointed out in *Maxwell's Interpretation of Statutes*, however, that it may be taken away by implication :¹

"Thus, 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 by arbitration."

In the present case, the section in terms makes it compulsory to refer the disputes in question to the Registrar for decision, and further provides that his decision or the award of the arbitrator or arbitrators, as the case may be, "shall be final and shall not be called in question in any civil court". It seems quite clear that the jurisdiction of the Courts is ousted.

I would dismiss the appeal with costs.

GRATIEN J.—I agree.

Appeal dismissed.

¹ *Ninth Edition pp. 136-137.*