

1969

Present : Wijayatilake, J.

ELUVAITHEEVU NORTH CO-OPERATIVE CREDIT SOCIETY,
Appellant, and M. NALLALINGAM (Chief Clerk, Court of Requests,
Kayts), Respondent

S. C. 94/67—C. R. Kayts, 8708

Registered co-operative society—Dispute touching its business—Reference to arbitrator—Arbitrator's award and other proceedings—Exemption from stamp duties—Co-operative Societies Ordinance (Cap. 124), ss. 33, 53 (1)—Co-operative Societies Rules of 1950, Rule 38—Stamp Ordinance (Cap. 247), ss. 2, 4, 8 (1), 8 (2), 39 (1), 41, 53, Exemption F (2) at p. 755.

Where, after a dispute between a registered co-operative society and some of its members is referred to an arbitrator, the award of the arbitrator is made a Rule of Court in accordance with Rule 38 (13) of the Co-operative Societies Rules of 1950, the award and the other proceedings are "instruments" within the meaning of section 33 of the Co-operative Societies Ordinance and, therefore, are not liable to stamp duty.

APPPEAL from an order of the Court of Requests, Kayts.

S. Sharvananda, with *P. Thuraiappah*, for the appellant.

K. M. M. B. Kulatunga, Crown Counsel, for the respondent.

Cur. adv. vult.

February 7, 1969. WIJAYATILAKE, J.—

The Appellant Society has been registered under the Co-operative Societies Ordinance, Chapter 124 as amended by Act No. 21 of 1949. The business of the said Society includes granting of loans to its members. Two members of this Society namely T. Krishnapillai and K. Sivalingam had stood surety to V. Vadivelu, another member, who had obtained a loan of Rs. 200 at 10 per cent. interest from this Society. They had failed to repay this loan and the Committee of the Society had in accordance with Section 53 (1) of the Co-operative Societies Ordinance and the Rules framed thereunder referred the dispute to the Assistant Commissioner of Co-operative Development for decision; who had in turn referred the matter to A. Tharmarajah for arbitration in pursuance of the powers conferred on him under Section 2 (2) of the said Ordinance read with Order of the Minister appearing in *Government Gazette* No. 10,115 of 30th June, 1953. The Arbitrator having inquired into the dispute in accordance with Rule 38 (1) of the Co-operative Societies Rules had made his Award as required by Rule 38 (9) and ordered the three members referred to above to pay the Society the sum of Rs. 246.50 and interest. There was no appeal from this Award. The said Society by its representative C. Thambo—Executor of Awards filed a petition before the Commissioner of Requests, Kayts, praying for an Order Nisi to the effect that the said Award be enforced in the same manner as a Decree of Court in accordance with Rule 38 (13) of the Co-operative Societies Rules of 1950 and the Civil Procedure Code. The Award was accordingly made a Rule of Court and Order Nisi was issued against the three respondents. Order Nisi was served only on T. Krishnapillai, the 2nd respondent and he had stated in Court that he had no cause to show why writ should not issue against him. At this stage the learned Commissioner had observed that the Award and the other proceedings had not been stamped and he had directed the Chief Clerk, to report on the amount of deficiency of Stamp Duty. The Chief Clerk had filed his report shewing the deficiencies as follows :

Letter of Appointment	..	Re. 1.00
Award	..	Re. 1.00
Petition	..	Re. 1.00
Application for execution of Writ	..	Re. 1.00
Notice	..	Re. 1.00

		Rs. 5.00

The Society has raised objections and the learned Commissioner after Inquiry had ruled that all these documents are liable to Stamp Duty as reported by the Chief Clerk. The present Appeal is from this order.

Mr. Sharvananda, learned Counsel for the appellant submits that the appellant being a registered Society Section 33 of the Co-operative Societies Ordinance exempts it from stamp duty. Section 33 provides as follows :

“ Every registered society shall be exempt from—

(a) the Stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society, or by an officer, or member, and relating to the business of such society, or any class of such instruments are respectively chargeable ; or

(b) any fee payable under the law of registration for the time being in force.”

He submits that the word ‘ instrument ’ in this Ordinance includes the word ‘ document ’. He has referred to the word ‘ documents ’ in Section 2 of the Stamp Ordinance Chapter 247 to show that this word is synonymous with the word ‘ instruments ’ and it does not have a connotation distinct from it. He submits that it is clear that it is mere surplusage. Sections 4 and 8 (1) and (2) too have been referred to in support of this submission.

Mr. Kulatunga, learned Crown Counsel, submits that the documents referred to are not ‘ instruments ’ within the meaning of this section and that they are not executed *by or on behalf* of the Appellant society. He has dealt with the procedure relating to an Award of Court being made a decree of Court and he submits that the documents occurring in this context are clearly not ‘ instruments ’ executed by or on behalf of the Society. He relies on the Divisional Bench cases of *Pinikahana Kahaduwa Co-operative Society Ltd. v. Herath*¹ and *Kandy Co-operative Urban Bank v. Senanayake*² and Sections 91, 224 and 225 of the Civil Procedure Code and Rule 38 of the Co-operative Societies Rules 1950 Chapter 124, and exemption F (2) appearing at page 755 of the Stamp Ordinance. He submits that any exemption should be expressly stated and he has drawn my attention to the Land Acquisition Ordinance (Chapter 460) and also the Requisitioning of Land Ordinance (Chapter 462) and Resumption of Crown Land Ordinance (Chapter 455). He has also referred me to Sections 39 (1), 41 and 43 of the Stamp Ordinance and to the Cases of *Fernando v. Pieris*³ and *Don Cornelis Appuhamy v. Kiribanda*⁴.

¹ (1957) 59 N. L. R. 145.

² (1937) 39 N. L. R. 352.

³ (1937) 39 N. L. R. 526.

⁴ (1938) 12 C. L. W. 166.

Mr. Sharvananda has further submitted that a registered Co-operative Society is virtually a body founded and fostered by the Government and therefore it would be contrary to the objects of both the Co-operative Societies Ordinance and the Stamp Ordinance to make these documents liable to duty.

In my opinion a statute such as the Stamp Ordinance should be strictly construed. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties. The subject is not to be taxed unless the language of the Statute clearly imposes the obligation. *Vide* Maxwell on Interpretation of Statutes—11th ed. p. 278. The words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the Enactment and the Object the legislature has in view. *Vide*—Maxwell page 51. In my view the word 'instruments' in Section 33 of the Co-operative Societies Ordinance is wide enough to cover the word 'documents'. An instrument is a formal document especially of a legal character. In the instant case the documents in question have come into being in pursuance of a dispute which had arisen between the society and some of its members and the procedure adopted is recognised by our Law. In the circumstances it would be highly artificial and hyper-technical to hold that these documents are not instruments as contemplated in Section 33 and that they have not been executed on behalf of the appellant society.

I would accordingly set aside the order of the learned Commissioner and hold that none of these documents are liable to Stamp Duty. The petitioner had made the Chief Clerk of the Court of Requests, Kayts, respondent to this Appeal. In the circumstances I make no order as to costs.

Order set aside.

