

1965 *Present:* H. N. G. Fernando, A.C.J., and Abeyesundere, J.

PUTTUR NORTH CO-OPERATIVE CREDIT SOCIETY,
Appellant, and C. THAMBIMUTTU and another, Respondents

S. C. 151/64 (Inty.)—D. C. Jaffna, 161

Affidavit—Procedure for swearing—Civil Procedure Code, s. 437—Co-operative society—Dispute referred to arbitrator—Award of arbitrator—Duty of District Court to enforce it—Co-operative Societies Ordinance (Cap. 124), s. 53.

When the award of an arbitrator in respect of a dispute which had been referred to him under the relevant provisions of the Co-operative Societies Ordinance was sought to be enforced in the District Court, the District Court refused to enforce the award on two grounds. One ground was that the affidavit which accompanied the application to enforce the award was defective because it did not show that it was made before a Justice of the Peace within the local limits of whose jurisdiction the deponent was at the time residing. The other ground was that the award was illegal on its face because it ordered the payment, by way of interest, of an amount greater than the principal debt.

Held, (i) that the affidavit was not defective. When an affidavit is sworn before a Justice of the Peace in terms of section 437 of the Civil Procedure Code it is not essential that a certificate must appear on the affidavit itself that the deponent resides within the area for which the Justice of the Peace is appointed. In such a case, the presumption of the regularity of official acts is applicable.

(ii) that the District Court had no power to refuse to enforce the award on the ground of an error of law or of fact on the part of the arbitrator in reaching his determination within jurisdiction. Such an error could be corrected on an appeal; but if there was no appeal, then in terms of section 53 of the Co-operative Societies Ordinance the award became final and could not be questioned in a civil Court.

Bandahamy v. Senanayake (62 N. L. R. 313) distinguished.

APPEAL from an order of the District Court, Jaffna.

H. W. Jayewardene, Q.C., with *K. S. Rajah* and *D. S. Wijewardene*,
for the Petitioner-Appellant.

No appearance for the Respondents.

Cur. adv. vult.

September 3, 1965. H. N. G. FERNANDO, A.C.J.—

This appeal was preferred from an order of the learned District Judge refusing to enforce an award made by an arbitrator to whom a dispute had been referred under the relevant provisions of the Co-operative Societies Ordinance.

One ground upon which the learned District Judge acted was that the Affidavit which accompanied the application to enforce the award was defective. In *Kanagasabai v. Kirupamoorthy*¹ Basnayake C. J. made the following comment:—

“The affidavit does not show that it was made before a Justice of the Peace within the local limits of whose jurisdiction the deponent was at the time residing. (Section 437 of the Civil Procedure Code).”

I do not disagree with the view that it may be desirable for a person before whom an affidavit is made to certify on the document itself that the deponent resides within the area for which the person is appointed. But Section 437 does not require that such a certificate must appear on the affidavit itself, and unless some such dispute actually arises as to the place of residence of the deponent, the presumption of the regularity of official acts should in my opinion suffice to establish that a Justice of the Peace ordinarily acts in conformity with the requirements of Section 437. Moreover, in the present case, the question whether the affidavit was defective is purely academic, since all the matters deposed to in the affidavit were also testified to in oral evidence given in Court. The order of the District Judge cannot therefore be supported on this ground.

The learned Judge also held that the award ordered the payment by way of interest of an amount greater than the principal debt, and that accordingly the award was illegal on its face. I will assume for present purposes the correctness of the opinion that an arbitrator acting under the Co-operative Societies Ordinance is bound by the principle of the common law as to the amount of interest which may be decreed against a debtor. Nevertheless, the District Judge had no power to refuse to enforce the award on the ground that this principle had not been observed. He relied on the statement in *Bandahamy v. Senanayake*² that “the party against whom the award is sought to be enforced should be given an opportunity of showing the existence of defects, even though the award does not bear any fatal flaws on its face”.

That statement must be understood in the light of the observations in the judgments as to the character of the defects which may vitiate an award at the stage when enforcement is sought. The majority judgments approved the decision in *Jayasinghe's Case*³ which in turn adopted the views expressed by Gratiaen J. in *Barnes de Silva's Case*⁴:—

“This rule, the validity of which may be assumed for the purposes of the present appeal, does not lay down the procedure for making such applications, but it is the clear duty of a Court of law whose machinery as a Court of execution is invoked to satisfy itself, before allowing Writ to issue, that the purported decision or award is *prima facie* a valid decision or award made by a person duly authorised

¹ (1959) 62 N. L. R. 54 at 59.

² (1955) 56 N. L. R. 462.

³ (1960) 62 N. L. R. 313.

⁴ (1953) 54 N. L. R. 326.

under the Ordinance to determine a dispute which has properly arisen for the decision of an extra-judicial tribunal under the Ordinance. In that event alone would the Court be justified in holding that the decision or award is entitled to recognition and capable, under the appropriate rule, of enforcement as if it were a decree of Court."

This view was approved and adopted by Basnayake C. J. in *Bandahamy v. Senanayake*. It is explained also in the judgment of Sansoni J.:—

"What Section 45 provides for is the enforcement of an award which :—

- (a) is made upon a dispute duly referred under the Ordinance, and
- (b) is made by a person duly empowered by or under the Ordinance to make it."

The defects, the existence of which may thus be shown, are defects which fall within the observations of Gratiaen J. which are cited above. Such defects, substantially, may be described as matters which establish a lack of jurisdiction in the person making the award. An error of law or of fact on the part of the arbitrator in reaching his determination within jurisdiction is not such a defect. Such an error can be corrected on an appeal, provision for which is found in Section 53 (formerly Section 45) of the Ordinance; but if no appeal is taken, then in terms of that Section the award becomes final and cannot be questioned in a civil Court. A District Court, which in this context is a Court of execution and not a Court of appeal, has no power to refuse to enforce an award on the ground that the award itself is erroneous.

I would allow this appeal with costs in both Courts. The order appealed from is set aside, and the order nisi for the enforcement of the award is made absolute.

ABEYESUNDERE, J.—I agree.

Appeal allowed.

