

1949

*Present : Wijeyewardene C.J. and Dias J.*

CANAGASABAI, Appellant, and KONDAVIL  
CO-OPERATIVE STORES, Respondent

*S. C. 110—D. C. Jaffna, 5,638*

*Co-operative Societies Ordinance—Shortage of cash in hands of manager—  
Dispute referred to arbitration—Crucial date—Is manager an “officer” ?—  
Power to give directions under rules—Chapter 107—Section 45 Rule 29.*

The manager of a co-operative society is an officer within the meaning of section 54 of the Co-operative Societies Ordinance.

Where on the date the Committee refers a dispute to the Registrar under section 45 the officer concerned is still in the employ of the society the reference is regular and the arbitrator has jurisdiction to make an award.

**A**PPEAL from a judgment of the District Judge, Jaffna.

*S. Nadesan*, with *C. Renganathan*, for the second defendant appellants.

*C. Shanmuganayagam*, for plaintiff respondent.

*Cur. adv. vult.*

March 11, 1949. DIAS J.—

The appellant who was the Manager of the Kondavil Co-operative Stores Society (the respondent) appeals against the order of the District Judge of Jaffna who dismissed the appellant's application to stay execution of an award dated September 12, 1947, made by an arbitrator nominated under the Co-operative Societies Ordinance (Chapter 107), and which in terms of Rule 29 (*k*) of the rules governing Co-operative Societies (*Subsidiary Legislation, Volume I, page 569*) was submitted to the District Court of Jaffna for execution by the issue of a writ against the appellant to recover a sum of Rs. 1,200 with interest at 6 per cent.

The appellant had previously preferred an appeal to the Registrar of Co-operative Societies against the award. That appeal was dismissed. Section 45 (4) of the Co-operative Societies Ordinance provides that a decision of the Registrar in appeal shall be final, and shall not be called in question in any civil Court. Section 45 (5) enacts that the award of an arbitrator shall, if no appeal is preferred to the Registrar, or if any such appeal is abandoned or withdrawn, be final and shall not be called in question in any civil Court. Of course, if the appellant can show that the award was made without jurisdiction, or that some fatal irregularity attaches to the proceedings preceding the application to the Court for execution, these presumptions would not apply. In such cases it would be open for the District Court and for this Court to grant relief<sup>1</sup>. The appellant's submission is that the award was made without jurisdiction, and that the reference to arbitration was illegal. In order to appreciate the submissions made it is necessary that the facts should be stated.

The Kondavil Co-operative Stores Societies, Ltd., is a co-operative society duly registered under the Co-operative Societies Ordinance (Chapter 107). The second defendant appellant was the manager of the Society. The indenture P3 dated June 29, 1945, shows that the appellant had been appointed the manager of the Society retrospectively as from August 21, 1944, on a monthly salary.

By P3 the appellant agreed to attend to his duties during the usual hours prescribed therefor by the rules of the Society. He undertook to carry out those duties in accordance with the directions and orders, written or verbal, given by the President of the Society, or such officer duly authorized in that behalf. He was to be in charge of and to be responsible for the stocks in his charge, and keep or cause to be kept the Day Book relating to sales, the Cash Book and other books as he may be called upon to keep and to see that they were up to date. He undertook to collect the daily takings at the end of each day, &c.

<sup>1</sup> See *Ghani v. Anjuman-i-Imad Qarza Bhaum Chak* (1942) A. I. R. Lahore 237 and *Ekanayaka v. Prince of Wales Co-op. Society Ltd.* (1949) 50 N. L. R. 297.

In case of any dispute or difference arising between the two contracting parties it was agreed that every such dispute or difference should be referred to the arbitration of the Registrar who may decide the dispute himself or appoint a nominee for the purpose, and the decision and award of the said Registrar or his nominee was to be final and conclusive between the parties.

The rules of the Society referred to in the agreement P3 is the exhibit P4. These rules must be deemed to be part and parcel of the agreement P2 because the appellant undertook in P2 to attend to his duties as prescribed by the rules of the Society.

The rules indicate who the chief officers of the respondent Society are and what books each officer is responsible for. The Secretary is enjoined to give to the Manager in writing a list of the latter's duties. The duties of the Manager are further enumerated in Clause 4 of the rules. It is, however, clear that clause 4 is not exhaustive of the duties of the Manager. He has also "to put into effect all matters and acts conveyed by the Secretary in writing personally, or as the decisions of the executive committee". Furthermore, under clause 8 (3) the salesmen are placed "under the charge of the manager." Obviously the duty of a manager is "to manage", i.e., to control, direct and regulate the business of the Society. The official in charge of such work is called "The Manager".

It is clear that sometime early in 1947, a shortage of Rs. 4,417, alleged to be cash in the hands of the Treasurer and the Manager (appellant), was discovered. On March 10, 1947, the Executive (Managing) Committee of the respondent Society met. At this date the appellant was the manager of the Society and the minutes (P5) clearly show that he attended that meeting. At one stage of the meeting the appellant left the meeting and the minutes record that fact. The relevant passage in the minutes reads—

"After the Manager walked out and after a short consideration the following resolution, proposed by Mr. Thilliampalam and seconded by Mr. S. Ponnuthorai, was passed: As a sum of Rs. 4,417 being the cash in hand up-to-date is in the hands of the Treasurer and in the hands of the Manager, and as the same has not been accounted for in this meeting on this March 10, 1947, this Society submits the matter to the arbitration of the Assistant Registrar, Co-operative Stores Societies, to recover and hand over the same".

It is clear that on March 10, 1947, the appellant was the Manager of the respondent Society. No proof has been led to show exactly when he ceased to be the manager. The appellant himself vaguely says "I ceased to be Manager in 1947." The evidence taken as a whole indicates that he ceased to be the Manager after the Executive (Managing) Committee had referred the matter for arbitration. The Assistant Registrar on August 27, 1947, referred the matter for arbitration, and the arbitrator, Mr. Cumaraswamy, after holding an inquiry on September 12, 1947, and having obtained the document P2 signed by the appellant in the presence of two witnesses admitting liability in a sum of Rs. 1,450, made his award. I may note in passing that the date on P2 is December 9 1947. This is clearly a mistake for "September 12, 1947," which is the

date on which the arbitrator held the inquiry. It cannot be December 9, 1947, for P2 was written on the day when the award was made, viz., September 12, 1947. In spite of his admission of liability and despite the award, the appellant appealed to the Registrar, Co-operative Societies, Colombo, who by his letter P1 dated November 19, 1947, dismissed the appeal.

Thereafter, in accordance with Rule 29 (k), the respondent Society filed the award in the District Court of Jaffna and moved for writ of execution to recover the amount of the award.

The appellant showed cause against the application for the writ. The respondent filed counter objections. After inquiry the District Judge over-ruled the appellant's objection and ordered that writ should issue. The appellant appeals from that order.

Before considering the various submissions made on behalf of the appellant it is necessary to consider the scope and effect of rule 29. The Editor of the Revised Legislative Enactments at the head of the rules, of which rule 29 forms part, states that they are—"Rules made under section 37 of The Co-operative Societies Ordinance, No. 34 of 1921, and *continuing in force by virtue of the provisions of section 52*": i.e., of the present Ordinance No. 16 of 1936 (Chapter 107). Section 52 (2) of Chapter 107 enacts: "All rules made under any Ordinance repealed by this Ordinance and in force at the time of the commencement of this Ordinance shall, *in so far as they are not inconsistent with the provisions of this Ordinance*, be deemed to have been made under this Ordinance, and shall continue in force *until* new rules are made under section 46 in substitution for those rules." It is common ground that no new rules have been made. Therefore, the old rules of which rule 29 is a part remain in force, but only in so far as they are not inconsistent with the provisions of Chapter 107. In case of any inconsistency, the rules must give way to the provisions of the main Ordinance. Section 52 says so expressly.

Bearing this in mind, when one examines the provisions of Rule 29 (a) and the statute law contained in section 45 (1) of the main Ordinance, it is manifest that Rule 29 (a) is in certain respects inconsistent with the provisions of section 45 (1). For example, section 45 (1) (c) enacts that "If any dispute touching the business of a registered Society arises . . . between the Society or its Committee and any officer of the Society . . . such disputes shall be referred to the Registrar for decision". That provision is not to be found in Rule 29 (a). Therefore, should a dispute arise between a Society or its Committee on the one hand, and any Officer of the Society on the other, touching the business of the Society, it must be referred to the Registrar for decision.

Section 45 (2) of the Ordinance provides that the Registrar may, on receipt of a reference under sub-section (1) (a), decide the dispute himself, or refer it for disposal to an arbitrator or arbitrators. Turning to rule 29 (b), it is there stated that the Registrar, if he does not decide the dispute himself, must refer it to "three arbitrators, one of whom shall be nominated by each of the parties and the third shall be nominated by the Registrar and shall act as Chairman". It will be seen that rule 29 (b)

is inconsistent with the provisions of section 45 (2) (b) of the main Ordinance as regards the number of arbitrators. It is because the Assistant Registrar was acting under the provisions of section 45 (2) (b) that the dispute was referred to a single arbitrator.

The recent judgment of my brothers Windham and Nagalingam JJ.<sup>1</sup> has been cited. There is nothing in that decision which conflicts with the view I have formed in the present case. In that case, the defendant was the President of a Co-operative Society, the registration of which was cancelled on March 27, 1947. Therefore, on that day the Society ceased to exist, and the defendant ceased to be a member or the President of the Society. On April 8, 1947, the Liquidator of the Society served a notice on the defendant to pay a large sum of money which it was alleged the defendant had not accounted for. On his refusal to pay, the matter was referred to arbitration, and an award was filed in Court. When the defendant was served with a notice under section 219 of the Civil Procedure Code to be examined in regard to his assets liable for seizure, he contended that the award was made *ultra vires* and was bad, and that it was not binding on him. The two points which had to be decided in appeal were : (a) Was the alleged award a valid award at all ? and (b) If not, whether the Court had power to go behind it and refuse to treat it as an award. The first question was answered in the negative on the facts, and the second question was answered in the affirmative. In the course of the judgment the applicability of sections 41 (h) and 40 (1) (d) of Chapter 107 was considered. Those two sections which refer to liquidators have no application to the present case. Windham J. further held that as the dispute was between the liquidator on the one hand and the defendant who was not a member or the President on the other, the provisions of rule 29 (a) or (b) could not apply. With respect I agree. The only relevance that case has to the present is that it lays down that the party against whom an award has been made is entitled to show the execution Court that it is a nullity and that no rights flow from it, and that it is open to the Court to go behind the award and decide for itself whether the award is in accordance with the law.

It is quite clear from the evidence that on March 10, 1947, a dispute touching the business of the respondent Society had arisen between the Committee on the one hand, and the appellant on the other. It is equally plain that on that day the appellant was the Manager of the respondent Society.

It is argued that the appellant was not an " officer " within the meaning of section 54 which defines the word to include " a chairman, secretary, treasurer, member of committee or other person empowered under the rules or by-laws to give directions in regard to the business of the Society." It is urged that the appellant is not a person who was empowered by the rules or by-laws of this Society to give directions in regard to the business of the Society. In my opinion the evidence makes it abundantly clear that the appellant was " an officer ", and that by his agreement P3 and under the rules of the Society P4 it was his duty as manager to give " directions in regard to the business of the Society." Therefore, this objection fails.

<sup>1</sup> (1949) 50 N. L. R. 297.

It was next argued that the reference to the Assistant Registrar is irregular and that, consequently, the reference by the Assistant Registrar to the arbitrator is irregular, and the award was therefore made without jurisdiction. The document P1 shows that the Registrar of Co-operative Societies is Mr. E. J. Cooray whose headquarters are at Colombo. In the *Ceylon Government Gazette* No. 9,581 of July 19, 1946, at page 1231, there appears an Order dated July 8, 1946, made by His Excellency the Governor under section 2 of Chapter 107 which confers on the persons mentioned in the Schedule to that Order who are designated "persons appointed to assist the Registrar of Co-operative Societies, the following powers of the Registrar under that Ordinance." Amongst the powers conferred is—

"7. The power under section 45 to decide any dispute or to refer any dispute for disposal to an arbitrator or arbitrators."

Amongst the persons so appointed to be Assistant Registrars of Co-operative Societies is Mr. Frank Arthur Sandrasagara. Reference to the Society's Rules P4 shows that those rules were approved by F. A. Sandrasagara, "A. R. C. S. N. P.", which I take to mean "Assistant Registrar, Co-operative Societies, Northern Province". I am entitled to take judicial notice of this order made under section 2 (2)<sup>1</sup>. Therefore, when on March 10, 1947, the Committee referred this dispute to the "Assistant Registrar, Co-operative Stores Society", they were referring the matter correctly to the person who was well known to everyone present to be the Assistant Registrar, Co-operative Societies, Northern Province, viz., Mr. Sandrasagara who had been duly appointed by the Governor to assist the Registrar, and who was expressly empowered to have disputes referred to him, to deal with such disputes himself, or to refer them to an arbitrator for disposal. No doubt, all these matters could and should have been made plain on the record when the evidence was led, but I think it is beyond question or doubt that the matter was properly referred to arbitration and that there exists no illegality or irregularity in the action taken by the Assistant Registrar, and that the arbitrator had jurisdiction to act. What is more, the appellant admitted liability in a written statement. He appealed to the Registrar in Colombo. There is no proof that he then took any of the points now made by his counsel in appeal. In my opinion this objection fails.

No doubt, the cases of two persons—that of the Treasurer and the appellant—were referred to arbitration. I do not see how that affects the case of this appellant. We do not know whether the case against the other person was inquired into or whether any award was made. It is idle for the appellant to suggest that he does not know what the dispute was. He says in his evidence that the arbitrator, Mr. Cumaraswamy, held an inquiry and that he recorded statements. What is more the appellant gave a writing admitting liability. It is impossible to hold that the appellant did not know what the inquiry was about.

It is also argued that at the date the award was made the appellant had ceased to be the manager of the respondent Society, and that the award against him offends both rule 29 (a) and section 45 (1) (c) of the Ordinance. In my opinion the crucial date is the one on which the

<sup>1</sup> *Sivasampu v. Juan Appu* (1937) 38 N. L. R. at p. 371 (Div. Ct.)

Committee referred the matter to the Assistant Registrar, viz., March 10, 1947<sup>1</sup>. On that date the appellant was the manager. The case of *Illangakoon v. Bogollagama*<sup>2</sup> is distinguishable on the facts. In that case the manager was not a member of the Society and he had ceased to be the manager long before the matter was referred to the Registrar. In the present case, when the committee referred the matter to the Assistant Registrar the appellant was the manager of the Society. The dispute between the appellant and the Society arose from transactions resulting from his being an officer of the Society. *Meera Lebbe v. Vannarponnai West Co-operative Society*<sup>3</sup> can also be distinguished from the facts of the present case. In that case there was no evidence to show what the functions of the manager were. Therefore, it was held that section 45 (1) (c) could not apply. In the present case there is ample evidence to show that the appellant was "an officer" of the Society within the meaning of section 54 of Chapter 107.

The appeal is dismissed with costs.

WIJEYWARDENE C.J.—I agree.

*Appeal dismissed.*

