

1962

*Present : Weerasooriya, S.P.J., and Herat, J.*S. RASIAH, Appellant, *and* K. J. CHELLATHURAI, Respondent*S. C. 363—D. C. Batticaloa 807/Spl.*

Co-operative society—Cancellation of its registration—Reference of a dispute thereafter to arbitration—Liquidator not a party—Effect of award—Co-operative Societies Ordinance (Cap. 124), ss. 46, 47, 48 (1) (d), 53.

It is not open to a person appointed as liquidator of a co-operative society, after the cancellation of its registration, to make an application to Court that an award of an arbitrator under the provisions of the Co-operative Societies Ordinance be made a decree of court and enforced as such, if the award was made in respect of a dispute which was referred for arbitration after the registration of the society had been cancelled and the reference was not made by the liquidator himself as plaintiff.

APPEAL from an order of the District Court Batticaloa.

C. Ranganathan, for the Defendant-Appellant.

No appearance for the Respondent.

July 23, 1962. WEERASOORIYA, S.P.J.—

This is an appeal from an order of the District Judge, Batticaloa, that an award against the appellant under the provisions of the Co-operative Societies Ordinance (Cap. 124) be made a decree of court and enforced as such. The award is dated the 25th of May, 1954, and sets out the dispute as one between “the Kommathurai Co-operative Stores Society (Liquidation), plaintiff, and Sinnathamby Rasiah of Kommathurai, Chengalady, defendant”, and relating to the question whether the defendant owed the plaintiff the sum of Rs. 1,712.39. It directed Sinnathamby Rasiah to pay to the Society the sum of Rs. 1,712.39 with interest.

It would appear that the registration of the Kommathurai Co-operative Stores Society had been cancelled by the Registrar under the provisions of the Co-operative Societies Ordinance nearly six years prior to the 23rd February 1953, which is the date on which this dispute was referred for arbitration. Section 46 of the Ordinance provides that where the registration of a society is cancelled the society shall cease to exist as a corporate body from the date on which the order takes effect, while Section 47 provides for the Registrar appointing a liquidator of a society the registration of which is cancelled, and for the vesting of all property of the society in the liquidator as from that date. The present application that the award be made a decree of court and enforced as such appears to have been made by the liquidator of the society appointed under section 47.

It is not clear when the claim of the society against the appellant first arose. Assuming, however, that it did arise prior to the order cancelling the registration, the rights of the society in respect of the claim would have vested in the liquidator, and any dispute that arose subsequently in regard to that claim would have been one between the liquidator and the appellant, and not between the society (which was then not in existence) and the appellant. Section 48 (1) (d) enables a liquidator to refer for arbitration under section 53 any dispute of any description mentioned in that section (references therein to the society being construed as references to the liquidator). It was open, therefore, to the liquidator to have referred this dispute for arbitration as a dispute arising between himself and the appellant.

We set aside the order appealed from and dismiss the application with costs in both Courts. The dismissal of this application is without prejudice to the right, if any, on the part of the liquidator to make a fresh reference for arbitration in terms of section 48 (1) (d) of the Ordinance.

HERAT, J.—I agree.

Order set aside.