

District Co-Operative Bank Ltd. vs Rahat Husain And Ors. on 21 October, 1955

Equivalent citations: AIR1956ALL112, AIR 1956 ALLAHABAD 112, 1956 ALL. L. J. 151

JUDGMENT

Mootham, C.J.

1. This is an appeal by the respondent from an order of a learned single Judge dated 12-11-1954, partially allowing a Writ Petition.

2. The petition arose out of a dispute between two societies registered under the Co-operative Societies Act, 1912, namely The District Co-operative Bank Ltd., (hereinafter referred to as 'the Bank') and the Postal Union Co-operative Society Ltd., (hereinafter referred to as 'the Postal Union'). The Postal Union was in the practice of making loans to its members, and to enable it to do so it obtained advances from time to time from the Bank.

A dispute arose between the Bank and the Postal Union as to the amount due by the latter to the former, and this dispute was referred to the Registrar, Co-operative Societies, who appointed an arbitrator. We do not know the terms of reference, but it is conceded that the dispute was one which fell within Clause (iv) of Rule 115 of the Rules made under the Act, that is a dispute "between two or more registered societies".

The arbitrator, however, issued notice not only to the Postal Union but to the members of that Society who were alleged to be persons to whom it had made loans which had not been repaid.

3. On 24-2-1952, the arbitrator pronounced his award, the award being in two parts, namely a judgment followed by a decision which reads as follows:

"This case has come up before me for arbitration under the order of the Assistant Registrar Co-operative Societies, U.P., Allahabad. I heard case, the claim for Rs. 15,467-8-0 principal, and Rs. 5,120 interest, total Rs. 20,587-8-0, with future Interest on principal sum of Rs. 15,467-8-0 only At 7 per cent, from 3-2-'52 is hereby decreed in favour of the plaintiff society against defendant 1.

The other defendants who are sureties shall also be held liable for the decretal amount with future interest as below, but the execution of this decree for the first time shall not be taken against them. Defendants Nos. 1 jointly and severally for Rs. 15,467-8-0 principal and Rs. 5,120 interest".

4. Thereafter the Bank moved the Collector of the district under Rule 137 to realise the amount of the award, not from the Postal Union but from the defaulting members of that society, as though it were an arrear of land revenue and warrants for the arrest of certain of the defaulting members were, we are informed, issued.

5. The first three respondents, who are three members of the Postal Union, thereupon filed the writ petition out of which this appeal arises. The reliefs which they sought were, first, the issue of a writ of 'certiorari' to quash the award and, secondly, a writ of mandamus commanding the Bank and the Collector not to proceed under the provisions of the Land Revenue Act for the realisation of dues owing by the petitioners to the Postal Union.

The learned Judge quashed the award so far as it purported to decree the claim of the Bank against the defaulting members of the Postal Union and also in so far as it gave directions laying down the manner in which the decretal amount was to be realised from those individual members.

He further directed the issue of a writ of mandamus restraining the opposite parties from proceeding against the persons and assets of the petitioners in enforcement of the award.

6. We have heard learned counsel, and entertain no doubt that the arbitrator had no power to make an award against the members of the Postal Union, including the first three respondents. The powers of an arbitrator are circumscribed by his terms of reference, and in this case by the provisions of the Act and Rules.

We are satisfied that the only dispute which was referred to the arbitrator was the dispute between the two Societies, and we are therefore of opinion that the learned Judge was right in quashing that part of the award which purported to uphold the claim of the Bank against the defaulting members of the Postal Union.

7. Rule 128 of the Rules made under the Act provides that "128. When an award has been obtained against a society, it shall not be executed except against assets in its hands.

Explanation: Assets of a society include, among others, amounts owed to the society by members"

and Rule 137 that "137. Awards of arbitrators and decision of an assistant Registrar or the Registrar may be enforced in either of the following ways:

(i) On a requisition to the Collector of the district made by the Registrar, all sums recoverable under the award or decision shall be recovered as if they were arrears of land revenue.

(ii) On application to the Civil Court having jurisdiction over the subject-matter of the award or decision, that Court shall enforce the award or decision as if it were a decree of the Court".

It is argued that by virtue of these rules an award against a Society may be enforced against members of that Society who are indebted to it as though the award were an arrear of land revenue. We do not think that this is so; in our opinion the learned Judge was right in holding that Rule 337 only permits the amount under an award to be realised as an arrear of land revenue against a society or person who is properly a party to the award. As the learned Judge points out in his judgment, "If A owes land revenue to the Government and B is a debtor who owes some amount to A, when proceedings to realise that revenue are taken by the Government against A the process issued cannot be enforced against the assets or person of B, the debtor of A. The assets of A alone can be seized, and not the assets of B, in pursuance of that process".

8. In a case such as the present the Postal Union can seek to obtain an award against its defaulting members, or the Bank can proceed, by an application to the civil Court under Clause (ii) of Rule 137 to enforce the award as if it were a decree of the Court, and, there appears to us to be no reason why, if it takes this course, the Bank cannot proceed under Order 21, Civil P. C. to attach and thereafter to have sold the sums due by defaulting members as debts due to the society.

In this view of the matter we think that the mandamus issued by the learned Judge is in terms which are too wide and that that part of the learned Judge's order must be modified to this extent that in lieu of the writ which he directed to issue there shall be substituted a writ directing the opposite parties to the writ petition not to proceed under the provisions of the Land Revenue Act for the realisation of amounts owed by the first three respondents to the Postal Union Co-operative Society Ltd. Subject to this modification the appeal is dismissed, but in the circumstances there will be no order as to costs.