

Supreme Court of India

Hyderabad Co Operative ... vs Syed Mohiuddin Khadir (Dead) By L. ... on 30 July, 1975

Equivalent citations: 1975 AIR 2254, 1976 SCR (1) 159

Author: A Ray

Bench: Ray, A.N. (Cj)

PETITIONER:

HYDERABAD CO OPERATIVE COMMERCIAL CORPN. LTD. ETC.

Vs.

RESPONDENT:

SYED MOHIUDDIN KHADIR (dead) BY L. RS. ETC.

DATE OF JUDGMENT 30/07/1975

BENCH:

RAY, A.N. (CJ)

BENCH:

RAY, A.N. (CJ)

MATHEW, KUTTYIL KURIEN

KRISHNAIYER, V.R.

FAZALALI, SYED MURTAZA

CITATION:

1975 AIR 2254

1976 SCR (1) 159

1975 SCC (2) 624

ACT:

Multi-Unit Co-operative Societies Act, 1942-Ss. 4(1), 4(2), 5A, 5B- Scope of.

Provision made in State Budget allocating money to a Co-operative Society-if could be attached by a judgment debtor-Delegation of power by the Central Registrar to State Registrar to dissolve a Co-operative Society-if valid.

HEADNOTE:

The appellant was a multi-unit co-operative society governed by the Multi Unit Co-operative Societies Act, 1942 Section 4(1) of the Act confers on the Central Government power to appoint a Central Registrar of Co-operative Societies. According to s. 4(2) the Central Registrar, if appointed, shall exercise, in respect of any co-operative society to which the Act applies to the exclusion of State Registrars, the powers and functions exercisable by the Registrar of Co-operative Societies of a State in which such society is actually registered. In 1952 the Hyderabad Co-operative Societies Act was passed which provides that the State Registrar had the power to dissolve a co-operative society and appoint a liquidator. 'I he Central Registrar of

Co-operative Societies was appointed in 1956. Section 5B of the 1942 Act empowered the Central Government to delegate "any power of authority exercisable by the Central Registrar under the Act" to State Registrars by a notification. In pursuance of this power the Central Government published a notification in 1956 delegating the powers (under the 1942 Act) to the State Registrars, one of which was the power to dissolve a co-operative society. The notification specifically mentioned the Registrar of Co-operative Societies of the State of Andhra Pradesh. As a result of this notification the powers of the Registrar of Co Operative Societies under the State Act of 1952, which were divested by the appointment of the Central Registrar, were immediately restored to him. In 1960, the State Registrar of Co-operative Societies passed an order of dissolution of the Society under S. 53 of the 1952 Act and appointed a liquidator.

In the State budget for. the year 1959-60 provision was made for payment of certain sums of money to the appellant society. The respondent, a decree holder of the Co-operative Society, in an execution petition sought attachment. Out of the sum provided in the budget, a certain sum due to him from the appellant society contending that the sum mentioned in the budget was a debt due to the appellant society. The execution court issued a prohibitory order to the Commissioner of Civil Supplies and the Accountant General to hold the said sum until further orders. On appeal the High Court held that the mere fact that the Commissioner of Civil Supplies, in whose custody the money was, directed the concerned officials to make payments to the co-operative society as and when occasion arose did not mean that the amount became the property of the Society. It further held that the attachment and prohibitory order were invalid. As regards the order of liquidation the High Court held that it could not be sustained because the delegation made under S. 5B of the 1942 Act was incompetent.

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HELD: The budget provision fastened on to the claim of the co-operative society against the State and it ripened into a debt payable to the Co-operative Society.

1. (a) Attachment of debts is a purpose by means of which a judgment creditor is enabled to reach money due to the judgment-debtor which is in the hands of a third person. These are garnishee proceedings. To be capable of attachment
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there must be in existence at the date when the attachment becomes operative something which the law recognises as a debt. So long as there is a debt in existence it is not necessary that it should be immediately payable. Where any existing debt is payable by future instalments, the garnishee order may be made to become operative as and when each instalment becomes due. The debt must be one which the judgment-debtor could himself enforce for his own benefit.

[163D-F]

The facts in present case establish that there was a debt due to the cooperative society and the attachment was validly made. The amount in dispute was not a mere budget provision but the documents show that the amount ripened into a debt and an order for payment to the co-operative society. The sum was impressed with the character of a debt due to the co-operative society and it was validly attached. [163 F-G]

(b) The contention that the amount was not brought into court and, therefore the provision lapsed is devoid of substance. The letter written by the Accountant General to the court is tantamount to the money being nationally brought to the court. 'the Accountant General said that the payment was not to be made except with the concurrence of the court. Thus it came into the control of and was held on behalf of the court. [163A-B]

2(a) The order of delegation is valid and the State Registrar was competent to dissolve the co-operative society. The contention of the decree-holder that the expression "any power or authority exercisable by the Central Registrar of Co operative Societies under this Act" in s. 5B means only powers or authority under s. 5 A of the Act is unsound. That expression takes in all powers under the 1942 Act including those under s. 4(2) which are the powers under the State Act embodied by reference in that section. [165F-166B]

(b) The provisions contained in s. 5B of the 1942 Act do not have any words of restriction in their application only to s. 5A of the Act. On the contrary, the provisions in s. 5B of the Act speak of delegation of power or authority exercisable by the Central Registrar under the 1942 Act. Whatever powers are exercisable by the Central Registrar by reason of s. 4(2) are capable of being delegated by reason of provisions contained in s. 5B of the 1942 Act. The delegation by the Central Government of the powers exercisable by the Central Registrar to be exercised by the State Registrar is supported by the provisions of the 1942 Act. [166B-D]

(c) The decree-holder could, therefore prefer the claim on account of attachment before the liquidator who would make appropriate orders for payment of appropriate amount to the decree-holder. [166G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1152, 1153, 1268, 1708, 1733 & 2539 of 1969.

From the judgment and decree dated the 23rd January 1968 of the Andhra Pradesh High Court in A.A.O. Nos. 210 and 374/67.

M. C. Bhandare, A. V. Rangam and A. Subhashini, for the appellant (In C.As. Nos. 1152-1153) & respondent no. 2 (in C.A. 1709/69).

B. D. Bal and P. P. Rao, for the appellants (in C.As. 1268 and 1733) and respondents Nos. 11 (in C.A. No. 1152), 11 and 12 (in 1153) .

S V. Gupte, A. Adil and K. J. John, for the appellants (In C.As. 1708 & 2539 and respondents 2-10 in C.As. 1152- 1153, and for respondents 1-9 in C.A. 1268/69).

A . V. V. Nair, for the respondent no. 11 in C.A. 1733.

The Judgment of the Court was delivered by RAY, C. J.- These six appeals are by certificate from the judgment dated 23 January, 1968 of the High Court of Andhra Pradesh at Hyderabad in C.M.A. No. 210 and 374 of 1967 in that High Court.

Two questions arise for decision in these appeals. First, whether in the circumstances of the case, there was any property of the Hyderabad Co-operative Commercial Corporation Ltd. hereinafter referred to as the Co-operative Society. Which could be attached by the decree holders,- the appellants in Civil Appeal No. 1708 of 1969 and Civil Appeal No. 2539 of 1969 in the hands of the Director of Civil Supplies. Second, whether the dissolution of - the Hyderabad Cooperative Commercial Corporation Ltd. by the Registrar of Co-operative Societies was competent.

Syed Mohiuddin Khadri, hereinafter referred to as the decree holder, obtained on 24 August, 1959 a decree from the City Civil Court, Hyderabad against the Co-operative Society for a sum of Rs. 6,91,293 11 Ps. with interest.

On 23 November, 1959, the decree holder filed an Execution- Petition before the City Civil Court against the Co-operative Society for attachment inter alia of a sum of Rs. 4,50,000/- belonging to the Co operative society and in the custody of the' Commissioner of Civil Supplies and the Accountant General, Hyderabad. On 27 November, 1959, the City Civil Court issued a prohibitory order to the Commissioner of Civil Supplies to hold the said sum until further orders. Pursuant to 'the order, on 2; December, 1959, the accountant General wrote to the Commissioner of Civil Supplies that in view of the order of the Court, no payment relating to the Co-operative Society would be made by his office without the concurrence of the Court. The decree holder contends that the attachment is valid. The State contends that there was no debt due to the Co- operative Society and therefore, there was no valid attachment.

The facts and circumstances under which the City Civil Court made an order for attachment are these. The State budget for 1959-60 provides for payment of Rs. 4,50,000/- to the Co-operative Society. In the Execution Application, the decree holder stated that the sum of Rs. 4,50,000/- mentioned in the budget was a debt due to the Co operative Society. The decree holder further

alleged that the sum Of Rs. 4,50,000/- belonging to the Co-operative Society was in the custody and control of the Commissioner of Civil Supplies and the Accountant General, Hyderabad as evidenced by the budget provision and a letter dated 12 June, 1959 issued by the Commissioner of Civil Supplies to the District Treasury officers. The letter dated 12 June, 1989 written by the Assistant Chief Accounts officer and approved by the Commissioner and addressed to District Treasury officers stated that "the fol lowing provisions for the Civil Supplies department are made under the above major head (meaning thereby Trading Civil Supplies) in' the budget estimates for the year 1959-60: (1) payment to Hyderabad Co-

operative Commercial Corporation-Rs. 4,50,000/ .. You are requested to kindly make the payments under the above heads as per rules and intimate to this office the full particulars of the amounts and expenditure incurred in your district every fortnight on the 5th and 20th of the succeeding month to which they relate for watching the expenditure as a whole against the above provision".

The City Civil Court on these facts issued a prohibitory order on 27 November, 1959 directing the Commissioner of Civil Supplies to hold the sum until further orders. The Accountant General, pursuant to the said prohibitory order, wrote to the Court on 2 December, 1959 that no payment relating to the Co-operative Society would be made by his office without the concurrence of the Court.

The High Court held that the mere fact that the Commissioner of Civil Supplies directed the Treasury officer to make payments to the Co-operative Society as and when occasion arose did not mean that the amount as a whole became the property of the Co-operative Society in the hands of the Disbursing officer namely, the Commissioner of Civil Supplies. The High Court held that the provisions of order 21, Rule 52 of the Code of Civil Procedure did not apply and the attachment affected and the prohibitory order made by the City Civil Court and the directions to deposit the amount were not valid.

It may be stated here that the State filed a suit C. S. No. 1 of 1962 under order 21, Rule 63 of the Code of Civil Procedure challenging the order of attachment. The suit was withdrawn by the Government. The High Court held that the withdrawal of the suit did not preclude the Government from questioning the validity of the attachment.

On behalf of the State, it was contended that the budget appropriation of Rs. 4,50,000/- for the financial year 1959-60 did not make the sum the property of the Co- operative Society in the custody of the Public officer. It was also contended by the State that the said sum was not a debt due to the Co-operative Society. The State also contended that the rules require claim being made, bill being processed, scrutiny as to whether there is sufficient fund credited to the appropriation for payment and in the present case, there was no order for actual payment. Another contention on behalf of the State was that even if the attachment was legal, it would cease to be so by the end of the financial year because the property was not brought into Court and the amount lapsed.

The documents in the present case and in particular the letter dated 12 June, 1959 and the letter dated 2 December, 1959 written by the Accountant General to the Court establish that there was a

debt due to the Co-operative Society and the attachment was validly made. The letter dated 12 June, 1959 provided for payment and the payment was approved by the Commissioner. The officers disbursing the amount were to pay in accordance with the rules and inform the Department about the expenditure incurred in that behalf. There is intrinsic evidence in the letter dated 12 June, 1959 that the approval by the Commissioner is not only sanction of the payment but also approval of the same. Payment in accordance with rules means that documents are to be vouched and there should be particulars of payment and identification of the persons to whom payment is to be made.

The letter dated 2 December, 1959 written by the Accountant General to the Court is tantamount to the money being nationally brought to the Court. The Accountant General said that the payment was not to be made except with the concurrence of the Court. Thus it came into the control of and was held on behalf of the Court. The amount of Rs. 4,50,000/- was not a mere budget provision but the documents show that the amount had ripened into a debt and an order for payment to the Co-operative Society. The sum of Rs. 4,50,000/- was impressed with the character of a debt due to the Co-operative Society and it was validly attached.

The contention on behalf of the State that the amount was not brought into Court and therefore, the provision lapsed is devoid of substance.

The letter dated 12 June, 1959 provided for payment of the sum of Rs. 4,50,000/-. The letter of the Accountant General dated December 2, 1959 indicated that the Accountant General pursuant to the order of the Court dated 27 November, 1959 brought the money to the Court.

Attachment of debts is a process by means of which a judgment creditor is enabled to reach money due to the judgment-debtor which is in the hands of a third person. These are garnishee proceedings. To be capable of attachment, there must be in existence at the date when the attachment becomes operative something which the law recognises as a debt. So long as there is a debt in existence, it is not necessary that it should be immediately payable. Where any existing debt is payable by future instalments, the garnishee order may be made to become operative as and when each instalment becomes due. The debt must be one which the judgment-debtor could himself enforce for his own benefit. A debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation (See *Webb v. Stenton*(1). In the present case, the letter dated 12 June, 1959 proves that there is an obligation to pay the specified sum of Rs. 4,50,000/- to the Co-operative Society. The budget provision fastened on to the claim of the Co-operative Society against the State and it ripened into a debt payable to the Co-operative Society. Therefore, in the circumstances, the attachment levied by the City Civil Court was perfected by bringing money to the Court.

The second question which falls for determination is whether the dissolution of the Co-operative Society by the Registrar of Co-operative Societies was competent. The State Registrar of Co-operative Societies on 6 September, 1960 cancelled the registration of the Co-operative Society under section 53 of the Hyderabad Co-operative Societies Act, 1952 and appointed a liquidator. The decree-holder filed Writ Petition No. 763 of 1960 on 2 November, 1960 before the High Court and impugned the validity of the order of liquidation. The High Court on 19 September, 1961 dismissed

the writ petition and upheld the order of liquidation.

Though the High Court dismissed the writ petition, the High Court had to deal with the question of liquidation of the Co-operative Society in C.M.A. No. 210 of 1967 and C.M.A. No. 374 of 1967. These two out of the order of the City Civil Court dated 11 July, 1967 in the decree-holder's Execution Petition No. 95 of 1959. The City Civil Court held that the judgment of the High Court upholding the validity of the order of dissolution and appointment of the liquidator in Writ Petition No. 763 of 1960 did not prevent the decree-holder from contending that the State Registrar had no jurisdiction to pass the order of liquidation. The High Court in the appeal in C.M.A. No. 210 of 1967 and C.M.A. No. 374 of 1967 held that though the High Court had decided in Writ Petition No. 763 of 1960 upholding the validity of the liquidation yet the order of liquidation could not be sustained because the delegation made under section SB of the Multiunit Co-operative Societies Act, 1942 was incompetent.

The liquidator in Civil Appeal No. 1268 of 1969 and Civil Appeal No 1733 of 1969 submitted that the liquidator was interested only in sustaining the validity of the order of liquidation. The liquidator is not interested in the dispute between the State and the decree-holder in regard to the order of attachment.

In order to appreciate the rival contentions of the decree-holder and the liquidator on the validity of the order of liquidation, it is necessary to refer to the provisions of Multi-unit Co-operative Societies Act, 1942. The 1942 Act applies to Co-operative Societies registered before the commencement of the Act and also to Societies which became registered after the commencement of the Act of 1942. The Co-operative Society was a Society registered before the Reorganisation of the States in 1956. As such the Society is a Multi-unit Society governed by the 1942 Act. The decree-holder did not challenge this position. The contention of the decree-holder is that under section 4 of the 1942 Act, the Central Registrar of Co-operative Societies shall exercise in respect of any Co-operative Society and to the exclusion of State Registrar, the powers and functions exercisable by the Registrar of Cooperative Societies of the State in which such Society is registered. Section 5B of the 1942 Act which speaks of delegation of any power or authority exercisable by Central Registrar to be exercisable by Registrar of Co-operative Societies of a State is contended by the decree holder to exclude the State Registrar from acquiring any power by delegation. The decree-holder contended that the power of delegation contemplated in section SB was confined only to matters mentioned in section 5A of the 1942 Act.

Under the 1942 Act Multi-unit Co-operative Societies whether registered before or after the coming into force of the Act were governed by the Co-operative Societies Act of the States in which they were registered. Under the 1942 Act and in particular sections 2 and 3 thereof, some powers like those of inspection, audit were given to Registrars of other States where such Societies had branches.

Under section 4(1) of the 1942 Act, the Central Government may, if it thinks fit, appoint a Central Registrar of the Co-operative Societies.

Section 4(2) of the 1942 Act provides that the Central Registrar of Co-operative Societies, if appointed, shall exercise in respect of any co-operative society to which the 1942 Act applies, to the exclusion of State Registrars, the powers and functions exercisable by the Registrar of Co-operative Societies of a State in which such Society is actually registered. The powers which the Central Registrar is to exercise under the 1942 Act are powers under the Co-operative Societies Act of the State where a particular Society is registered. The powers exercisable by the State Registrar under the Co-operative Societies Act are by reference under section 4(2) of the 1942 Act incorporated into the 1942 Act and exercisable by the Central Registrar where the Central Registrar is appointed by the Central Government.

The State Registrar was admittedly competent to exercise in respect of the Co-operative Society all powers under the Hyderabad Co-operative Societies Act, 1952 referred to as the 1952 State Act. Under the 1952 State Act, the State Registrar had the power to dissolve the Cooperative Society and appoint a liquidator.

The Central Government appointed a Central Registrar of Co-operative Societies for the first time on 29 December, 1956. If the matters had rested there, the State Registrar would have been divested of his powers over the Society under the State Act as from that date. The matters, however, did not rest there. Section 5B of the 1942 Act empowers the Central Government to delegate any power or authority exercisable by the Central Registrar under the Act to State Registrars and certain other officers by a Notification published in the official Gazette. Simultaneously with the appointment of the Central Registrar, the Central Government published a Notification on 29 December, 1956 delegating the powers or authority under the 1942 Act in relation to certain matters including dissolution to the State Registrars and other officers mentioned in the Notification in respect of Societies registered in their respective States. The Registrar of Societies, Andhra Pradesh was specifically mentioned in the Notifications. The result of the Notification was that the powers under the State Act of 1952 of which the State Registrar was divested by the appointment of the Central Registrar were immediately restored to him. [It is in exercise of these powers under the State Act of 1952 which were restored to the State Registrar that he passed the order of dissolution of the Society and appointed a liquidator on 6 September, 1960.]

Section 5B of the 1942 Act empowers the Central Government to Delegate "any power or authority exercisable by the Central Registrar of Co-operative Societies under this Act" (meaning thereby the 1942 Act) to the State Registrars and other officers. The language in section 5B of the 1942 Act is plain. There are no words of limitation or reservation. The expression "any power or authority exercisable by the Central Registrar of Co-operative Societies under this Act" takes in all powers under the 1942 Act including those under section 4(2) which are the powers under the State Act embodied by reference in that section.

The simultaneous introduction of section 5A and section 5B into the 1942 Act in the year 1956 with effect from 1 November, 1956 points to the fact that section 5B follows section 5A but does not confine section 5B only to matters mentioned in section 5A of the 1942 Act. The contention on behalf of the decree-holder that the expression "any power or authority exercisable by the Central Registrar of Co-operative Societies under this Act" in section 5B means only powers or authority

under section 5A of the Act is unsound. Section 5A of the 1942 act is a transitional provision regarding certain Cooperative Societies affected by the Reorganisation of States. The provisions contained in section 5B of the 1942 Act do not have any words of restriction in their application only to Section 5A of the 1942 Act. on the contrary, the provisions in section 5B of the 1942 Act speak of delegation of power or authority exercisable by the Central Registrar under the 1942 Act. Whatever powers are exercisable by the Central Registrar by reason of section 4(2) of the 1942 Act are capable of being delegated by reason of provisions contained in section SB of the 1942 Act. The delegation by the Central Government of the powers exercisable by the Central Registrar to be exercised by the State Registrar is supported by the provision of the 1942 Art. The order of delegation being valid, the State Registrar was competent to dissolve the Co-operative Society by the order dated 6 September, 1960.

It is, therefore, not necessary to express any opinion as to whether the contention of the decree-holder challenging the validity of the order of dissolution of the Co-operative Society and appointment of liquidator is barred by reason of constructive resjudicata on account of the dismissal of the Writ Petition No. 763 of 1960 filed by the decree holder in the High Court.

For these reasons, the judgment of the High Court is set aside. The attachment of the sum of Rs. 4,50,000 is upheld. The order of dissolution of the Co-operative Society and appointment of the liquidator are held to be valid.

The High Court stated that "it will be open to the decree-holder to take up execution against the Government. for the amount due to him from the Co-operative Society on the ground that the Government has taken over the entire assets and liabilities of the Co-operative Society.' We affirm that finding of the High Court.

Under the interim order of this Court, the liquidator deposited an amount of Rs. 90,000/-in the Court. That amount was allowed to be withdrawn by the legal representative oil the decree holder on furnishing bank guarantee. The liquidator asked for refund of that amount to the liquidator to enable him to discharge his duties according to law.

The decree-holder will prefer the claim on account of attachment of Rs. 4,50,000/ before the Liquidator. If in liquidation, it will appear that there are prior claims or that the decree-holder will be entitled to any rateable distribution out of Rs. 4,50,000/-, the liquidator will make appropriate orders for payment of appropriate amount to the decree holder.

We make it clear that after payment by the liquidator to the decree-holder whatever amount will remain due to the decree-holder, it will be open to the decree-holder to take up execution against the Government for the amount due by the Co-operative Society on the ground that the Government has taken over entire assets and liabilities of the Co-operative Society subject, of course, to such contentions as the Government may have.

The appeals filed by the State are dismissed. The decree-holder will be entitled to costs in these appeals to be paid by the State. The liquidator will retain costs out of the assets in his hands. The

amount of Rs. 90/- which has been withdrawn by the decree-holder will now be refunded to the liquidator. There will be one set of costs for the decree holders. There will be similarly one set of costs for the liquidator.

P.B.R.

Appeals dismissed.