

1958 Present : K. D. de Silva, J., and Sansoni, J.

THE SIYANE GANGABODA CO-OPERATIVE STORES UNION
LTD., Appellant, and AMARASEKERA, Respondent

S. C. 90.—D. C. Gampaha, 73/Co-op.

Co-operative Societies Ordinance (Cap. 107)—Section 45 (2)—Award made thereunder—Application to execute it—Is there a time limit?—Civil Procedure Code, s. 696.

Where application was made by a Co-operative Society on May 10, 1956, for the execution of an award given on July 29, 1950, in terms of section 45 (2) of the Co-operative Societies Ordinance—

Held, that the time limit of six months imposed by section 696 of the Civil Procedure Code for filing an award is not applicable to an award made in terms of section 45 (2) of the Co-operative Societies Ordinance.

APPEAL from an order of the District Court, Gampaha.

E. J. Cooray, with *E. B. Vannitamby*, for the Petitioner-Appellant.

No appearance for the Debtor-Respondent.

Cur. adv. vult.

August 8, 1958. K. D. DE SILVA, J.—

This is an appeal from an order of the District Judge, Gampaha, dismissing an application of a Co-operative Society for the execution of an award dated July 29, 1950, made in its favour. The application for execution was made on May 10, 1956, by petition and affidavit by way of summary procedure. The learned District Judge took the view that in terms of section 696 of the Civil Procedure Code the award should have been filed in Court within six months of making it. Apart from that, he held that there was such undue delay in applying for execution that it would be an abuse of the procedural machinery of the Court to grant the application. For these reasons he dismissed the application with costs. The learned District Judge erred in holding that section 696 of the Civil Procedure Code was applicable to an award such as this which is made in terms of section 45 (2) of the Co-operative Societies Ordinance (Cap. 107). In the case of *Pinikahana Kahaduwa Co-operative Society, Ltd. v. Herath*¹ which was decided by a Bench of five Judges it was held that a Court had no alternative but to execute an award, regular on the face of it, as a decree of Court. It is not suggested that the award in question is not *ex facie* regular. In fairness to the learned District Judge I must observe that the case I have referred to above was decided several months after he made his order in this case. I would therefore set aside the order of the learned District Judge and allow the appeal with costs and direct that the award be executed as a decree passed by a Civil Court.

SANSONI, J.—I agree.

Appeal allowed.

¹ (1957) 59 N. L. R. 145.