

1960      *Present:* . H. N. G. Fernando, J., and Sinnetamby, J.

ST. JOACHIM'S CO-OPERATIVE STORES SOCIETY, LTD.,  
Appellant, and W. L. SOVIS and others, Respondents

*S. C. 404—D. C. Negombo, 16702*

*Co-operative Societies Ordinance—Arbitrator appointed thereunder—Application to enforce award—Time limit—Inapplicability of s. 596 of Civil Procedure Code—Misconduct of arbitrator—Remedy of aggrieved party.*

Section 696 of the Civil Procedure Code which imposes the time limit of six months for making an application to file an arbitrator's award in court does not apply to awards made under the Co-operative Societies Ordinance.

If an arbitrator appointed under the Co-operative Societies Ordinance is guilty of misconduct or acts contrary to the principles of natural justice, the remedy, if any, is to apply to the Supreme Court for special relief. If that remedy is not sought, and an award is made by a person with duly vested jurisdiction, the District Court must necessarily enforce it.

**A**PPPEAL from a judgment of the District Court, Negombo.

*E. R. S. R. Coomaraswamy*, with *E. B. Vannitamby*, for Creditor-Appellant.

*S. W. Jayasuriya*, for 1st and 2nd Respondents.

*N. Abeysinghe*, for 3rd Respondent.

December 2, 1960. H. N. G. FERNANDO, J.—

The application by the appellant Co-operative Society to enforce as a decree of Court an award made in its favour by an Arbitrator appointed under the Co-operative Societies Ordinance was refused by the District Judge on two grounds. One ground was that the application was not

made to the District Court within six months of the making of the award. Following the decision in 60 N. L. R. at page 45, we think this objection was unsound for the reason that Section 696 of the Civil Procedure Code does not apply to awards made under the Co-operative Societies Ordinance. The other ground relied on by the District Judge was that, according to his finding, the arbitrator did not administer an oath to one of the witnesses, and in the case of the same witness, did not permit cross-examination. In regard to the failure to administer the oath, the District Judge himself realised that even if there had been such a failure it was not fatal to the validity of the proceedings, and I doubt whether he would have relied on this ground if it was the only alleged irregularity. We also find ourselves unable to concur with the District Judge's finding that the Arbitrator did not permit a witness to be cross-examined. In regard to that matter, the District Judge preferred to accept the oral evidence of one of the respondents in preference to the evidence of the person, who (it is alleged) was not permitted to be cross-examined when he gave his testimony before the arbitrator. The learned District Judge failed to take into account the presumption, though rebuttable, that a person acting officially would normally do so in the proper legal manner. The fact that no evidence was elicited in cross-examination does not suffice to show that there was a refusal on the part of the tribunal to permit cross-examination. The least that the District Judge should have done before reaching such a decision was to have summoned the arbitrator and questioned him on the matter before deciding that he had acted in an improper manner. In any event, we do not think that the District Judge had the power to decide that the arbitrator acted improperly. In the case recently decided by a Bench of seven Judges, it was not, according to my recollection, argued that a District Court could refuse to enforce an award on such grounds as have been taken in this case. We think that if an arbitrator is guilty of misconduct or acts contrary to the principles of natural justice, the remedy, if any, is to apply to this Court for special relief. If that remedy is not sought, and an award is made by a person with duly vested jurisdiction, the District Court must necessarily enforce it.

We direct that the record be remitted to the District Court for the award to be enforced in like manner as a decree. The appellant society will be entitled to costs in both courts.

SINNETAMBY, J.—I agree.

*Appeal allowed.*