

**PIYADASA**  
**v.**  
**SRI JAYAWARDENAPURA MULTI-PURPOSE**  
**CO-OPERATIVE SOCIETY LTD.**

COURT OF APPEAL  
JAYASINGHE, J. (P/CA) AND  
EDIRISURIYA, J.  
CA NO. 1389/98  
SEPTEMBER 21, 2001  
OCTOBER 30, 2001,  
JUNE 25, 2002 AND  
JULY 02, 2002

*Co-operative Societies Law, No. 5 of 1972, sections 58, 58 (4) and (6) and 59 (1) – Arbitration – Appeal – Interpretation Ordinance, section 22 (a) (b) – Should the petitioner be heard? – "Written and oral hearing" – Is written hearing excluded by section 59? – Could the award be enforced against the widow of a party to the dispute? – Substitution in the Court of Appeal.*

**Held:**

- (1) The matters urged on his behalf before the Arbitrator were considered by the Commissioner in the determination of the appeal.

The additional representation the petitioner claims entitlement to in respect of the appeal to the Commissioner has been expressly excluded by the legislature by section 58 (4). There is no denial of a right of hearing. The petitioner is not entitled to a hearing in terms of section 58 (4).

- (2) The party from whom such sum is due has been classified as a defaulter. The widow of the petitioner cannot be said to be a defaulter in terms of section 59. The money that is due can only be recovered in terms of section 59 from the defaulter and from no one else. Upon the death of the original petitioner any property that the petitioner had and possessed devolved on his wife and the heirs.

**APPLICATION** for a writ of *certiorari*.

**Case referred to :**

1. *Kalutara Distilleries Co-operative Society v. Arsacularatne* – 71 NLR 325.

*Dr. Jayampathy Wickremaratne, PC, with Pubudu Wickremaratne* for petitioner.

*Chandra Gamage* for 1st and 2nd respondents.

*Viran Corea, State Counsel* for 3rd respondent.

*Cur. adv. vult.*

October 25, 2002

**JAYASINGHE, J. (P/CA)**

The petitioner was the Manager of a Petrol Station owned by the 1st<sup>01</sup> respondent from 02. 01. 1995 to 02. 01. 1996. By letter P1 the society demanded a sum of Rs. 78,361.20, which was allegedly the value of the shortage of stocks between the period 02. 01. 1995 to 31. 12. 1995. The petitioner refused to pay. The 2nd respondent was then appointed as an Arbitrator under the Co-operative Societies Law, No. 5 of 1972 as amended to inquire into the dispute. The 2nd respondent after inquiry made an award in favour of the 1st respondent holding that a sum of Rs. 49,870.77 was due to the 1st respondent. Being aggrieved by the award the petitioner appealed to the 3rd<sup>10</sup> respondent.

The 3rd respondent refused the petitioner's appeal by document P5. The petitioner complained that the petitioner was not afforded an opportunity to place his case before the 3rd respondent either orally or in writing. The present application is to set aside P5.

The main complaint of the petitioner is that he has not been heard. However, the respondent society took up the position that the

petitioner is not entitled to a hearing in terms of section 58 (4) of the Co-operative Societies Act which provides that –

"No party to an appeal made to the Registrar under subsection 3<sup>20</sup> shall be entitled either by himself or by any representative to appear before or be heard by the Registrar on such appeal."

Ms. Wickremaratne submitted that the words appear "before and be heard" refer only to an oral hearing and therefore does not exclude a written hearing. It was submitted that the petitioner should have been given an opportunity to explain his case to the Appellate Authority and also to answer the respondent's case at least in writing. That a written hearing is not excluded by section 58.

Mr. Gamage for the 1st respondent submitted that the Co-operative Societies Law, No. 5 of 1972 does not provide for an appeal to Court<sup>30</sup> against an award of the Arbitrator or the Commissioner in terms of section 58 (6); that the remedy that is available is administrative review; that the Arbitrator's award is made after complete and comprehensive hearing where all parties are present and subject to cross-examination. He submitted that this procedure is set forth to confined society litigation to the Co-operative Department under the supervision of the Commissioner in order to facilitate the operations of several societies throughout the country. He relied on *Kalutara Distilleries Co-operative Society v. Arsacularatne*<sup>(1)</sup> where Wijayatilake, J. referred to the Co-operative Societies Law as special legislation<sup>40</sup> engaged in trade and industry and observed that Courts need not interfere. Mr. Gamage further submitted that in view of the restrictions placed on the petitioner by operation of section 58 (6) the aggrieved party could seek relief only if such party could satisfy that he comes within proviso (a) or (b) of section 22 of the Interpretation Ordinance.

Learned State Counsel submitted that the petitioner is unable to avail himself of the proviso (a) or (b) of section 22 of the Interpretation Ordinance in that the petitioner has not been denied the right to be heard. That the matters urged on his behalf before the Arbitrator were considered by the Commissioner in the determination of the appeal. 50  
The additional representation the petitioner claims entitlement to in respect of the appeal to the Commissioner has been expressly excluded by the Legislature by section 58 (4).

We have considered the submissions of counsel. We are of the view that there had been no denial of a right of hearing. Writ of *certiorari* therefore cannot issue.

Even though we have not been invited to examine the recovery process, we feel obliged to consider this aspect in view of the situation that has arisen since the petitioner came before this Court.

While the petitioner's application before this Court was pending, 60  
the petitioner died on 02. 04. 2000 and the wife of the petitioner sought to substitute herself as the substituted petitioner on the basis that after the original petitioner was dismissed from service by the 1st respondent, the petitioner made an application No. 8/4130/98 to the Labour Tribunal against the termination. The substitution of the wife of the petitioner was necessitated by the fact that the widow of the original petitioner claimed that in the event of the petitioner succeeding in the Labour Tribunal any sum awarded to the petitioner as compensation was liable to be appropriated by the 1st respondent to satisfy the award made by the Arbitrator and therefore for that reason sought substitution to 70  
prosecute the application before this Court.

During the hearing we inquired from the counsel for the petitioner whether an award under section 58 could be enforced against the widow of a party to the dispute as in the present application.

The learned counsel adverted to section 59 (1) of the Co-operative Societies Law. Section 59 (1) provides for the recovery of the award from the "defaulter".

We have considered the application of section 59 (1) carefully. We find that the party from whom such sum is due has been classified as a defaulter. Clearly, the widow of the petitioner cannot be said to be a defaulter in terms of section 59. The money that is due can only be recovered in terms of section 59 from the defaulter and from no one else. Upon the death of the original petitioner any property that the petitioner held and possessed devolved on his wife and the heirs. Therefore, no order can be made against the heirs for seizure of such property. The award, if any, made by the Labour Tribunal cannot be the money the respondent could recover in satisfaction of the award, since that money does not belong to the deceased petitioner. 80

**EDIRISURIYA, J.** – I agree.

*Appeal dismissed.*