

1949

Present: Wijewardene C.J.

PRESIDENT OF MALALGODAPITIYA CO-OPERATIVE SOCIETY *et al.*, Petitioners, and ARBITRATOR OF CO-OPERATIVE SOCIETIES, GALLE, *et al.*, Respondents.

S. C. 103—IN THE MATTER OF AN APPLICATION FOR A WRIT OF CERTIORARI ON THE ARBITRATOR OF CO-OPERATIVE SOCIETIES, GALLE, *et al.*

*Writ of certiorari—Undue delay—Disqualification.*

A writ of *certiorari* will not be issued where there has been undue delay in applying for the writ.

**T**HIS was an application for a writ of *certiorari* in respect of an award made by an arbitrator under the Co-operative Societies Ordinance.

*M. L. S. Jaysekere*, for the petitioners.

*B. C. F. Jayaratne*, Crown Counsel, for the respondents.

*Cur. adv. vult.*

October 3, 1949. WIJEYWARDENE C.J.—

This is an application for a writ of *certiorari* in respect of an award made by an arbitrator under Rule 29 of the Rules made under section 37 of the Co-operative Societies Ordinance, No. 34 of 1921. Those Rules continue in force under the Co-operative Societies Ordinance, No. 16 of 1936, by virtue of section 52 (2) of that Ordinance.

The first petitioner was the President and the second petitioner, the Honorary Treasurer of the Malalgodapitiya Co-operative Society (second respondent) from March 25, 1943, to May 11, 1946. The dispute that formed the subject matter of the arbitration proceedings arose out of a refund of share capital made by the petitioners to certain members of the Co-operative Society. The petitioners made a refund of Rs. 20 in April, 1946, to the wife of one of the petitioners while she was continuing to be a member of the Society. A further sum of Rs. 181 was refunded to certain members between May 11, 1946, and June 1, 1946, when the petitioners were not officers of the Society. The second petitioner continued to be a member of the Society until July, 1949, while the first petitioner appears to have resigned from the membership sometime after June, 1946. There is, however, no definite evidence as to the date of his resignation of membership.

On representations made by the second respondent Society to the Assistant Registrar of Co-operative Societies of the Southern Province on March 8, 1947, the dispute was referred to the first respondent as Arbitrator. The petitioners were duly served with notice of the arbitration proceedings, and they were present at the inquiry on November 29, 1947. The first petitioner himself gave evidence at the inquiry. At the close of the inquiry the first respondent held that the refunds of Rs. 20 and Rs. 181 were made *mala fide* by the petitioners and he pronounced his award in the presence of the petitioners that the petitioners should pay Rs. 201 with interest to the second respondent society before December 30, 1947. The petitioners appealed to the Registrar (third respondent) under section 45 (3) of the Ordinance on December 20, 1947. The Registrar affirmed the award on March 21, 1948. The second respondent society filed the award in C. R. Galle 27,196 under Rule 29 on July 16, 1948. The petitioners filed the present petition in this Court on February 21, 1949. Until they filed that petition, the petitioners did not question the jurisdiction of the first respondent.

The point taken up before me was that the Arbitrator could not act in this matter as the dispute was between the Society and past officers of the Society. This contention is clearly untenable with regard to the sum of Rs. 181 which was refunded by the petitioners after they ceased to be officers and when they were continuing to be members of the Society.

I do not think that in the circumstances of this case the petitioners have made out a case for obtaining relief from this Court on this petition as there has been undue delay in applying for the writ.

I refuse the application and order the petitioners to pay Rs. 84 as costs of the first and third respondents.

*Application refused.*

