

1947

Present : Canekeratne J.

MEERA LEBBE, Appellant, and VANNARPONNAI WEST
CO-OPERATIVE SOCIETY, Respondent.

247—C. R. Jaffna, 16,599.

Co-operative Societies Ordinance (Cap. 107), s. 45 (1)—Dispute between Co-operative Society and member but not in latter's capacity as member—Applicability of s. 45 (1).

The claim of a Co-operative Society upon a member, who was appointed the manager of its stores, for misappropriating moneys of the Society cannot be regarded as a dispute between the Society and one of its members within the meaning of section 45 (1) of the Co-operative Societies Ordinance.

APPEAL from a judgment of the Commissioner of Requests,
Jaffna.

C. Chellappah, for the plaintiff, appellant.

H. W. Thambiah, for the defendant, respondent.

Cur. adv. vult.

February 27, 1947. CANEKERATNE J.—

This is an appeal from the decision of the Commissioner of Requests, Jaffna, who made order dismissing the plaintiff's action for the recovery of a sum of Rs. 250, part of the security deposited by him with the defendant, and interest thereon. The defendant is a Co-operative Society. It appears, according to what was stated at the argument, to purchase articles such as rice, foodstuffs and other things and sell them to its members. The plaintiff, who was a member of the Society, was appointed the manager of the stores of the defendant about May, 1943, and functioned as manager for some time; his services were dispensed with on September 1, 1944. This action was instituted by him on May 12, 1945.

The defence originally was that the plaintiff had misappropriated a sum of Rs. 1,370.12 and that the defendant was entitled to a set-off against the claim of the plaintiff; by an amendment the society pleaded that the action was barred by the provisions of paragraph (b) and paragraph (c) of sub-section (1) of section 45 of the Co-operative Societies

Ordinance (Chapter 107). The Commissioner came to the conclusion that the plaintiff was an officer of the society because he was the manager ; as it was conceded that the plaintiff was a member of the society he seemed to take the view that sub-paragraph (b) also applied.

Counsel for the appellant submitted, in the first place, that the dispute was not between the plaintiff *qua* member and the society : on this point he relied on the language used in the section. Counsel for the respondent maintained the contrary by making use of the same language. Counsel for the appellant argued, secondly, that the plaintiff was not an officer of the Society. I was referred by him to several cases which I do not propose to discuss. These are cases in which a particular person was held not to be an officer for the purposes of a particular statutory enactment, or under particular circumstances ; it is to be observed that none of these cases considers the position of a manager of a store. I fail to see how they help the plaintiff. Counsel for the respondent tried to support the views advanced by the trial Judge on this point. Since the conclusion of the argument counsel for the appellant drew my attention to the decision in *Wasudeo v. Registrar*¹.

The appeal relates to questions arising primarily under section 45, sub-section 1 of Chapter 107. The sub-section provides that "if any dispute touching the business of a registered society arises "(a) (b) between a member, past member or and the society, its committee or any officer of the society or (c) between the society or its committee and any officer of the society, such dispute shall be referred to the registrar for decision". It is necessary to show that there is a dispute between the parties concerned. To show that there is a dispute within the purview of the registrar it is necessary to show first that it is one touching the business of the society : secondly, it must arise between a member and the society or between the society and any officer of the society. A clause has been added at the end of the first paragraph— "a claim by a registered society for any debt or demand due whether such debt or demand be admitted or not, shall be deemed to be a dispute touching the business of the society within the meaning of this sub-section". It provides that certain claims which do not in fact come within the expression "dispute touching the business" shall be deemed to be disputes : it artificially enlarges the ambit of the expression used in the earlier part.

It will be convenient to deal first with the second question. A society has to carry on its business by its agents. It would be bound by a contract made by some person acting under the express or implied authority of the company. Ordinarily one would assume that the directors have express authority to act on the society's behalf. Who is a person acting on the implied authority of the society must depend upon the rules of the society or upon other circumstances. There is no evidence to show what the functions of the plaintiff as manager of the stores were or what authority he had to bind the company. In the absence of such evidence I do not think that the plaintiff can be considered to fall within the class of persons referred to in paragraph (c) above.

¹ (1946) 33 A. I. R. Bombay, 346.

The decision in *Wasudeo (supra)* adopts the view taken in a Madras case that the word "officer" in section 51 of the Madras Co-operative Societies Act would not mean officers past and present. The language used in this section is substantially the same as in section 45 (1) of Chapter 107—"If any dispute . . . arises—(b) between a member . . . and the society—(c) between the society . . . and any officer, agent . . . of the company." The reasons the Judge gave were that there were two instances of particular reference being made to past officers and past members. In Chapter 107 also there is one instance of past officers being referred to (section 35, sub-section 4) : also an instance in which a past member is referred to (sub-paragraph (b) of section 45).

The first question deals with a dispute between a member and the society. A member would be liable to pay any money due on the shares allotted to him, likewise the purchase price of any articles purchased by him. His liability to pay certain other sums is referred to in the earlier sections—debts and outstanding demands (sections 20 and 21).

In *Morrison v. Glover*¹ a building society had lent money to a member on a mortgage and the member covenanted to observe and fulfil the rules of the society and to pay the rent reserved by the lease ; the society sued in respect of breaches of the covenant : the Court held that as some part of the plaintiff's claim was not a matter in dispute between the society and the defendant as a member, but only as mortgagor, the society was not bound to refer to arbitration the subject matter of the action. Thereafter a consolidating statute was passed in 1874 and this was amended in 1884. The position then seems to have been as follows:—"the effect was that substantially the law has been brought back to the state in which it was before the Act of 1874 but with this addition—that any society may expressly provide by rules that disputes shall be referred to arbitration which could not be referred prior to the Act of 1874". (*Municipal Permanent Investment Building Society v. Richards*².) In that case a claim by the society against its officer for misappropriating and keeping in his hands moneys of the society was held not to be a dispute between the society and a member thereof in his capacity as a member. This case was referred to in the judgment in *Naraniya Iyār v. Co-operative Urban Bank Ltd.*,³ the Madras case which is referred to in the decision of *Wasudeo v. Registrar (supra)*. Following the decision in *Richards case*² the Judge in the Madras case took the view that the dispute in question therein concerned none of the actions or claims of the defendants as members but only their actions as directors.

It would be straining the language of the Legislature far beyond its natural meaning if one were to hold that the claim of the society upon the manager of its stores for misappropriating moneys of the society is a dispute between the society and one of its members within the meaning of the enactment.

The appeal is allowed with costs and the case sent back for trial on the other issues.

Appeal allowed.

¹ (1849) 4 *Erch.* 430.

² (1888) 39 *Chancery Div.* 372.

³ (1936) *A. I. B. Mad.* 81.