

1971 Present : H. N. G. Fernando, C.J., and Thamotheram, J.

THE MULTI-PURPOSE CO-OPERATIVE SOCIETY LTD., Appellant,
and K. I. GUNATILLEKE, Respondent

S. C. 194/68 (Inty.)—D. C. Kalmunai, 645/M

Co-operative Societies Ordinance (Cap. 124)—Section 53—Wrongful termination by Society of a member's membership—Suit by member for damages—Lack of jurisdiction of the ordinary Courts.

The plaintiff, who was a member of a Co-operative Society, sued the Society for damages for "wrongfully and maliciously and without any manner of reason" terminating his membership of the Society.

Held, that, although the action was based on delict, the question whether a member of a Co-operative Society has been wrongfully deprived of his membership in breach of the rules of the Society is one which must be determined by the process of arbitration. In such a case the jurisdiction of the ordinary Courts is ousted by section 53 of the Co-operative Societies Ordinance.

APPPEALS from a judgment of the District Court, Kalmunai.

E. R. S. R. Coomaraswamy, with *C. Chakradaran* and *S. C. B. Walgampaya*, for the defendant-appellant.

U. C. B. Ratnayake, with *M. K. Ratnayake*, for the plaintiff-respondent.

Cur. adv. vult.

February 26, 1971. H. N. G. FERNANDO, C.J.—

The plaintiff, who was a member of the defendant Co-operative Society, alleged in his plaint that the defendant "wrongfully and maliciously and without any manner of reason" terminated his membership of the Society. Averring that he had thereby suffered pain of mind and loss of reputation and deprivation of his rights and privileges as a member, the plaintiff claimed damages in a sum of Rs. 2,500.

The learned trial Judge has answered in the affirmative the following preliminary issue:—

"In view of s. 53 (1) (b) of the Co-operative Societies Ordinance, Chapter 124, does this Court have jurisdiction to entertain this action?"

The ground of this answer is that the action appears to be one based on delict, and that such an action is in the language of the judgment in the case of *Karunatilleke v. Abeywira*¹ "an ordinary civil dispute within

¹ (1966) 68 N. L. R. 503.

the traditional jurisdiction of the Courts ” and one “ ordinarily determined by the Courts and not intended to be the subject of awards ”. The passages thus relied on occur in that part of the judgment which stressed the fact that the dispute in that case concerned the existence of an implied contractual liability and the duty to perform it, and held that such a dispute is within the traditional jurisdiction of the Courts, and could not be the subject of a reference to arbitration under s. 53.

The present action is no doubt one based on delict, in that the plaintiff alleges a wrongful and malicious act of the Society which has caused him *injuria*. But the subject of the dispute is whether or not the Society wrongly terminated the plaintiff’s membership, and that termination can only be wrongful if the membership was terminated in breach of the rules of the Society. Earlier observations in the same judgment refer to such disputes :—

“ As between a society and its members, disputes can well arise as to the construction and effect of the rules governing relations between members *inter se* and the relations between a society and its members, as to whether a society or a member had acted in breach of the rules as to the qualification of members to hold office in the society, as to the validity of elections or appointments to office in a society, as to the scope of the business which a society may lawfully carry on, and as to similar matters peculiar to associations of persons. It was clearly the intention of the Legislature that such disputes should be finally decided by the Registrar, in the exercise of his supervisory functions, or by arbitrators appointed by him.”

“ I have no doubt that the determination by the Registrar or an arbitrator of a dispute affecting any of the matters just mentioned does not involve the exercise of the judicial power of the State.”

With respect, these observations should have made it clear that the question whether a member of a Co-operative Society has been wrongly deprived of his membership is one which must be determined by the process of arbitration. In the earlier case of *Sanmugam v. Badulla Co-operative Stores Union Ltd.*¹ this Court had already held that in such an event the jurisdiction of the ordinary Courts is ousted.

The trial Judge doubts whether the present dispute is one touching the “ business ” of a Society. This point is also dealt with in the observations cited above, which expressly contemplate that disputes as to “ matters peculiar to associations of persons ” are properly referable to arbitration. Termination of membership is certainly such a matter. Thus the opinion which the learned Judge appears to hold, that the word “ business ” in s. 53 has only the connotation of some commercial or contractual transaction, is contrary to the opinion on which those observations are based.

¹ (1952) 54 N. L. R. 16.

I hold for these reasons that the preliminary issue must be answered in favour of the defendant Society. The plaintiff's action is dismissed with costs, but in the circumstances I make no order as to the costs of appeal.

THAMOTHERAM, J.—I agree.

Appeal allowed.

