

1969 *Present* : Samerawickrame, J., and Pandita-Gunawardene, J.

ATCHUVELY MULTI-PURPOSE CO-OPERATIVE SOCIETY
LTD., Appellant, and S. BALASINGHAM, Respondent

S. C. 106/67 (Inty.)—D. C. Jaffna, 268/A

Co-operative Societies Ordinance, as amended by Act No. 27 of 1964—Section 53A (4)—Enforcement of an award thereunder—Seizure and sale of defaulter's dwelling house—Validity—Difference, in execution proceedings, between a decree of Court and an award made under the Co-operative Societies Ordinance—Civil Procedure Code, as amended by Act No. 49 of 1958, ss.217, 218 (n).

When a sum of money due under an award made under the Co-operative Societies Ordinance is sought to be recovered in terms of the provisions of section 53A (4) of the Co-operative Societies Ordinance, the dwelling house of the defaulter is liable to be seized and sold in pursuance of the writ issued to the Fiscal by the District Court. In such a case, the defaulter is not entitled to the benefit of the proviso to the amended section 218 of the Civil Procedure Code because what is sought to be enforced is not a decree or order of a Court but an award made under the Co-operative Societies Ordinance. Moreover, according to section 53A (4) of the Co-operative Societies Ordinance, the only sections of the Civil Procedure Code which are applicable to execution proceedings relating to an award are sections 226 to 297.

APPEAL from an order of the District Court, Jaffna.

A. C. Cooneratne, Q.C., with *S. Sharvananda*, for the petitioner-appellant.

No appearance for the respondent-respondent.

Cur. adv. vult.

July 11, 1969. PANDITA-GUNAWARDENE, J.—

The provision in the Co-operative Societies Ordinance which stipulates for enforcement of awards is Section 53A (Co-operative Societies (Amendment) Act 27 of 1964).

Section 53A (4) empowers the Registrar upon an award being made in the matter of a dispute that a sum of money due by one party to another has not been paid, to issue a certificate to the District Court " and the Court shall thereupon direct a writ of execution to issue to the Fiscal authorizing and requiring him to seize and sell all or any of the property movable and immovable of the defaulter, or such part thereof as he may deem necessary for the recovery of such sum, and the provisions of sections 226 to 297 of the Civil Procedure Code shall, *mutatis mutandis*, apply to such seizure and sale ".

deal with, "the duties of the Fiscal on receiving writ: modes of seizure"; "claim to property seized:" and "sale of movable and immovable property:".

Had the Legislature intended that the judgment-debtor be entitled to the benefit of the proviso to section 218 Civil Procedure Code in the enforcement of an award under section 53 A (4) (Co-operative Societies Ordinance) it would, I expect, have so provided. In the absence of such a provision I find myself unable to agree with the order of the learned Additional District Judge releasing the respondent's property from seizure. The order directing the Fiscal to release the property from seizure is set aside.

The appeal is allowed with costs.

SAMERAWICKRAME, J.—I agree.

Appeal allowed.
