

1947

Present : Nagalingam A.J.

MOHIDEEN, Appellant, and LANKA MATHA CO-OPERATIVE  
STORES SOCIETY, LTD., Respondent.

236—C. R. Colombo, 1,729.

*Co-operative Societies Ordinance (Cap. 107), s. 45—Dispute between registered society and member, but not in latter's capacity as member—Jurisdiction of ordinary civil courts.*

A dispute between a society registered under the Co-operative Societies Ordinance and one of its members in regard to a transaction not resulting from membership is triable by the ordinary Courts and is not referable, under section 45 of the Co-operative Societies Ordinance, to the Registrar of Co-operative Societies.

**A** PPEAL from a judgment of the Commissioner of Requests,  
Colombo.

*S. J. Kadirgamar*, for the plaintiff, appellant.

*H. W. Jayewardene* (with him *C. Shanmuganayagam*), for the defendant,  
respondent.

*Cur. adv. vult.*

<sup>1</sup> (1917) *All India Reports (Madras)* 748.

<sup>2</sup> (1918) *All India Reports (Madras)* 1111.

<sup>3</sup> (1934) *All India Reports (Rangoon)* 82.

April 1, 1947. NAGALINGAM A.J.—

This appeal involves a short point of law and the question is whether a dispute between a society registered under the Co-operative Societies Ordinance, Cap. 107, and one of its members in regard to a transaction not resulting from membership is one referable exclusively to the decision of the Registrar of Co-operative Societies and not triable by the ordinary Courts of law.

The facts shortly are:—The plaintiff who was admittedly a member of the defendant society at the material dates was employed by it as checker and night watcher on a monthly salary of Rs. 67.50, and the plaintiff alleging that his services had been wrongfully terminated instituted this action for recovery of arrears of salary and damages for wrongful dismissal.

Among other defences the defendant society put forward the plea that the Court of Requests had no jurisdiction to try the claim in view of the provisions of section 45 of the Ordinance. The learned Commissioner has upheld the plea and dismissed the plaintiff's action. It seems to have been conceded on behalf of the plaintiff at the trial that the action was in fact barred but on appeal the contrary has been maintained by the appellant's counsel. The respondent, however, endeavours to sustain the judgment of the Court of Requests by contending that one of the factors which would oust the jurisdiction of the Court is proof of the relationship of the plaintiff to the defendant society as member. In other words, his contention is that it is immaterial whether the dispute arises from the relationship of membership or not but that it is sufficient that the dispute is between a person who is clothed with the character of a member towards the society. If this were the intention of the Legislature, nothing would have been simpler than for the Enactment to have provided that a dispute between a person who is a member and the society should be referred to the Registrar for decision, but that is precisely what the Enactment does not say. Having regard to the scope and intention of the Legislature in enacting this provision it cannot be doubted that the object of this provision was to provide machinery for the speedy and expeditious disposal of a dispute between a member in his capacity as a member and the society by referring the dispute to a domestic tribunal. The construction contended for by the respondent's counsel would lead to the necessity of having to attribute to the Legislature an intention to regulate dealings not merely between members and the society but also between third parties and the society—an intention which it is difficult to conceive as ever having been in the mind of the Legislature. The true test whether a particular dispute falls within the ambit of this provision is to ascertain whether the dispute arises between the society and the member *qua* member. If the dispute is not between the member and the society in his capacity as member, then that dispute is clearly outside the scope of the section.

It is manifest that the dispute between the plaintiff and the defendant does not arise from his relationship to the society as member. I would

therefore hold that the dispute is one which is not referable to the Registrar for decision but one that can properly be investigated by the Commissioner of Requests. The judgment of the learned Commissioner is set aside and the case is remitted to him for adjudication on the other questions that arise between the parties. The plaintiff will be entitled to the costs of appeal and of the trial had in the lower Court.

*Appeal allowed.*

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