

1959 *Present* : Weerasooriya, J., and K. D. de Silva, J.

MATALE ASGIRI PALLESYAPATTU CO-OPERATIVE SOCIETY,
Appellant, and S. K. PERERA, Respondent

S. C. 464—D. C. Matale, X 460

Co-operative Societies Ordinance—Section 45 (2)—Reference to arbitration—Must both parties to dispute consent?

The reference of a dispute to arbitration under section 45 (2) of the Co-operative Societies Ordinance need not be made jointly by the parties to the dispute.

APPPEAL from an order of the District Court, Matale.

T. B. Dissanayake, with N. R. M. Daluwatte, for the petitioner-appellant.

No appearance for the respondent.

January 23, 1959. WEERASOORIYA, J.—

In this case a dispute which arose between the petitioner-appellant, a Co-operative Society, and the respondent was referred to arbitration under section 45 (2) of the Co-operative Societies Ordinance. An award made by the arbitrator in favour of the petitioner was thereafter sought to be enforced under the provisions of rule 38 (13) of the rules made under section 46 of the Ordinance. The respondent filed a number of objections against the application to enforce the award, of which the only objections of any substance are numbers 7 and 8. Objection No. 7 is that the award is bad inasmuch as the reference to arbitration was not made jointly by the plaintiff-society and the debtor-defendant. Objection No. 8 is that rule 38 (13) under which the award was sought to be

¹ (1824) 2 Bing. 258.

enforced is ultra vires and the society cannot therefore maintain the application. On the authority of the case of *S. M. Don Nereus v. Halpe Katana Stores Society Ltd.*¹, which was cited to the District Judge, he upheld both these objections and dismissed with costs the application to enforce the award. But that case can no longer be regarded as authority for upholding the two objections referred to in view of the more recent decision of a majority of a bench of five Judges of this Court in *The Pinikahana Kahaduwa Co-operative Society Ltd. v. P. M. Herath*² the effect of which decision is that rule 38 (13) is not ultra vires and that the reference of a dispute to arbitration under section 45 (1) of the Ordinance need not be made jointly by the parties to the dispute.

The objections taken by the respondent must, therefore, be over-ruled and the proceedings will be remitted to the Court below so that the award may be enforced as a decree of the Court. The petitioner-appellant will be entitled to the costs of appeal and also the costs of the inquiry into the objections taken by the respondent to the enforcement of the award.

DE SILVA, J.—I agree.

Appeal allowed.
