

1954

*Present : Gratiaen J.*

D. C. PANDITHA, Appellant, *and* D. J. N. DE ZOYSA, Respondent

*S. C. 1,560—M. C. Galle, 8,558*

*Co-operative Societies Ordinance (Cap. 107), as amended by Act No. 21 of 1949—  
Section 50A—Money due to registered society—Mode of recovery.*

Before the machinery of a Magistrate's Court is invoked for the purpose of recovering money alleged to be due by a person to a Co-operative Society, the requirements of section 50A of the Co-operative Societies Ordinance must be strictly proved.

**A**PPEAL from an order of the Magistrate's Court, Galle.

*C. G. Weeramantry*, for the appellant.

*E. R. S. R. Cosmaraswamy*, with *E. B. Vannitamby*, for the liquidator respondent.

March 19, 1954. GRATIAEN J.—

This is an appeal against an order made under section 50A (2) of the Co-operative Societies (Amendment) Ordinance, No. 21 of 1949, whereby the Magistrate of Galle made an order for the recovery of a sum alleged to be due by the appellant to a Co-operative Society as if it were a fine imposed by a sentence of the Magistrate.

In my opinion, the order was prematurely made. Section 50A provides an extraordinary remedy and in all the circumstances it seems to me that before the machinery of the Magistrate's Court is invoked for the purpose of recovery, the requirements of the section must be strictly proved. For instance, there must be proof to the satisfaction of the Magistrate that in the course of an audit under section 17 of the Ordinance or of an inquiry or inspection under section 35 or in the course of the winding-up of a registered society it had appeared that a sum of money was due to the society from a person who had taken part in the organization or management of the society or from any past or present officer of the Society. It must be further proved that before making any order under the section the Registrar had given that person an opportunity of being heard and of showing cause why such an order should not be made. Finally it must be proved that the order sought to be enforced was in fact signed by the proper officer. None of these things can be presumed by a court.

I therefore quash the order and send the case back to enable the respondent to take such steps to enforce the alleged order as he may be advised. I make no order as to the costs of this appeal, but if the respondent should ultimately fail at the fresh trial he will pay to the appellant a sum of Rs. 52.50 as the costs of this appeal.

*Order quashed.*

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