

I, therefore, agree with my Lord the Chief Justice that this appeal should be allowed and the judgments and orders of the Courts below should be set aside and the petition should stand dismissed. I also agree to the order for costs made by my Lord the Chief Justice.

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 Province of
 Bombay
 v.
 K. S. Advani
 and Others.
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 Das J.

Appeal allowed.

Agent for the appellant : *Ranjit Singh Narula.*

Agent for the respondents Nos. 1 (a) and 1 (b) :
Rajinder Narain.

[IN THE SUPREME COURT OF INDIA (HYDERABAD).]

CO-OPERATIVE SOCIETY OF DEBTS

v.

NANDLAL

[MEHR CHAND MAHAJAN and R. S. NAIK JJ.]

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 Oct. 12.

Co-operative Credit Societies Act, 1940 F., (Hyderabad), s. 42—Award—Remission by Registrar to Civil Court for execution—Powers of Registrar—Instalment decree—Default—Execution proceedings for whole amount in Civil Court—Power of Registrar to accept instalment and direct Civil Court to stop proceedings.

Section 42 of the Co-operative Credit Societies Act, 1940 F., (Hyderabad) provided as follows: "If an award given by the Registrar or by a person nominated by him, or by a committee of arbitrators is not acted upon, then the Registrar can have it enforced—(a) through a civil court on a certificate issued by him. The civil court will treat the award in the same way as its own decree; (b) through a Revenue Court or officer by issuing a certificate to that court or officer."

Held, that under the section the Registrar was not in the same position as a court passing the decree under the Civil Procedure Code in the matter of execution of the decree and he does not possess all the powers of an executing court.

Where a dispute arose between a member of a society and the society and an arbitrator appointed under the Act passed a decree for payment of a certain sum in six monthly instalments with a condition that if default was made in the payment of any instalment the whole amount will become due, and under the provisions of s. 42 the decree was sent for execution to the Civil Court on a certificate of Registrar :

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Held, that after a default had been made in the payment of the first instalment and the whole decree debt had become due and execution had been taken out for recovery of the whole amount, the Registrar had no power to accept the amount of first instalment and direct the executing court to stop further proceedings, and the executing court was entitled to ignore the Registrar's order and to proceed with the execution.

APPEAL under article 374(4) of the Constitution from a judgment and decree of the High Court of Hyderabad dated 24th Aban 1356 F., in Civil Appeal No. 374/4 of 1356 F.

Devi Pershad, for the appellant.

Appa Rao and *Sada Shiva Rao*, for the respondent.

1950. October 12. The judgment of the Court was delivered by

Mahajan J.

MAHAJAN J.—This appeal arises out of execution proceedings of a decree passed by an arbitrator under the Co-operative Credit Societies Act. The appeal was presented to the Judicial Committee of the State and is now before us under article 374 (4) of the Constitution.

Raja Nandlal was a member of the decree-holder society and was also its debtor. A dispute arose between him and the society and under the rules governing such societies the matter was referred to arbitration. The arbitrator on the 19th Meher 1352 F., passed a decree against him in the sum of Rs. 8,100 payable in equal six monthly instalments with six per cent. interest, the first instalment being payable at the end of Azur 1353 F. On the 2nd Dai 1353 F., under the provisions of section 42, clause (d), of the Co-operative Societies Act the decree was sent for execution to the civil court on a certificate issued under the signature of one Moulvi Mohammed Hasan, Madadgar Nazim. The amount recoverable was stated as Rs. 8,100 principal and Rs. 666-9-0 interest. On the same day the decree-holder presented an application for execution of the decree to the Civil Court, Balda, claiming recovery of Rs. 10,339 14-9. It was alleged that as default had been committed in the payment of

the first instalment due in the month of Azur 1353 F., the whole decretal amount had become recoverable. It was prayed that the property detailed in the application be attached. On 3rd Dai 1353 F., *i.e.*, a day after the presentation of the application for execution, the judgment debtor deposited a sum of Rs. 1,000 towards the first instalment in the Office of the Registrar of Co-operative Societies and expressed his willingness to deposit any further amount that may be due towards that instalment. The Nazim's office stated in reply that as he had committed default in the payment of the first instalment the whole decree had become due and the amount of Rs. 1,000 could not be accepted. Subsequently, however, on the 5th Dai 1353 F., a letter was issued by one Mohammed Aihsan, Assistant Madadgar Nazim, to the Civil Court, Balda, saying that Rs. 1,034 had been deposited in the Office of the Nizamath Co-operative Credit Societies and therefore the proceedings in execution should be stayed or adjourned. On receipt of the letter in the civil court, the decree-holder raised an objection that the Registrar had no jurisdiction to stay execution of the decree as he was not an executing court. This objection was overruled by the court and it was held that under the provisions of section 42 of the Co-operative Credit Societies Act the Registrar retained the power of staying execution of the award decree even after the issue of a certificate by him. In the result the execution proceedings were stayed. Against this order an appeal was taken to the Sadar Adalat. The Sadar Adalat allowed the appeal partially and held that to the extent of the payment made the decree could not be executed but it could be executed with respect to future instalments as and when they would fall due. It further found that the default clause in the decree must be taken to have been condoned by the deposit of the first instalment in the office of the Registrar. The decree-holder preferred a second appeal to the High Court but without any material success. The High Court held that there had been a default in the payment of the first instalment

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and the decree-holder had thus a right to execute the whole decree and that neither the Registrar nor the executing court could deprive the decree-holder of that right. In spite of this finding it took the view that the Registrar still retained jurisdiction to adjourn execution proceedings. The contention of the judgment-debtor that the certificate was bad as having been issued by a Madadgar Nazim was negatived. It was held that the Madadgar Nazim had delegated powers in this respect and that the defect, if any, stood cured by a fresh certificate signed by the Nazim himself. The result was that with these findings the decision of the executing court adjourning the execution proceedings was maintained.

The first point for consideration in this appeal is as regards the jurisdiction of the Registrar functioning under the Co-operative Credit Societies Act in respect to execution of decrees. The decision of this question depends on the interpretation to be placed on the language employed in section 42, clause (d), of the Co-operative Credit Societies Act, 1340 F., as amended. This section is in these terms :—

“If an award given by the Registrar or by a person nominated by him, or by a committee of arbitrators is not acted upon, then the Registrar can have it enforced—

(a) through a civil court on a certificate issued by him. The civil court will treat the award in the same way as its own decree ;

(b) through a Revenue Court or officer by issuing a certificate to that court or officer.”

The language employed in this section does not place the Registrar on the same pedestal as a court passing the decree under the Civil Procedure Code. Under the Code a civil court passing a decree is also the court executing the decree. It has a dual capacity, (1) of the court passing the decree, and (2) of the executing court. The Registrar, it appears, has the first capacity of a civil court but he has not been placed in the matter of execution in the same capacity as a civil court passing a decree. The only

jurisdiction conferred on the Registrar is that he can issue a certificate and on that certificate he can send a decree either to the civil court or to a revenue officer. It may be that after issuing a certificate he may be entitled to cancel the certificate or issue another, or he may by withdrawing the certificate withdraw execution from a civil court and send it to a revenue court and *vice versa*. On the plain words of the section it cannot be held that the Registrar has been constituted an executing court or that any powers in the matter of the execution of the award decree have been conferred upon him. The question that arises for consideration is whether in view of this construction of the section it was open to the Registrar to intervene during execution proceedings that were pending in a civil court on the basis of the certificate granted by him. In order to determine this point it is necessary to see precisely what the Registrar actually did in this case. After a default had been made in the payment of the first instalment and the whole decree debt had become due and execution had been taken out for recovery of the amount, the Registrar accepted the amount of the first instalment and asked the executing court to stop further proceedings. The act of the Registrar in accepting the first instalment was a clear trespass on the duties of the executing court. It is only in the executing court where payment towards satisfaction of the decree, the execution of which had been taken out, could be made, unless the court passing the decree has also the jurisdiction to execute it. As already indicated, this jurisdiction is not possessed by the Registrar. That being so, in our opinion, the requisition of the Registrar to the executing court to stop execution proceedings and his act in accepting the first instalment were in excess of the jurisdiction conferred on him and the executing court was entitled to ignore it. Moreover, the Registrar could not alter or amend the decree passed by the Arbitrator at this stage.

All the courts below have interpreted the section to mean that the Registrar as the court passing the

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decree has the same power as the court executing it. We are unable to agree in this view in view of the clear language employed in the section. The analogy of decisions given in respect of civil courts is not available in interpreting this Act. Under the Civil Procedure Code the parent court, *i.e.*, the court passing the decree, always retains jurisdiction to execute the decree even if it has been transferred to one or more courts for the purpose of execution. Primarily it is the function of the court passing the decree to execute it but when it is found that it is not possible for it to effectively execute it provision has been made in the Code authorising it to send it to other courts for the purpose of execution; but none of these provisions in any way affect the jurisdiction of the court passing the decree to execute it whenever it thinks fit to do so and the order transferring execution to other courts does not take away its jurisdiction in the matter. The position however in the case of the Registrar is entirely different. He himself has been given no jurisdiction to execute his own decree. The only power conferred on him is to get it realized through a civil court or a revenue court and the only authority conferred on him is to issue a certificate for that purpose.

The High Court in this case has, in our opinion, given a decision contradictory to its own findings. It has been held that the first appellate court was in error in the view that the default clause in the decree stood condoned by the payment of the first instalment by the judgment-debtor in the office of the Registrar and it has been positively found that once a default has been made the Registrar had no jurisdiction to condone it and that the decree-holder was entitled to execute the decree for the full decretal amount with interest. Having reached this conclusion the High Court still maintained the decision of the two courts below adjourning the execution proceedings. The logical result of the High Court's decision is that the certificate stands and the execution application has been properly made and the decree-holder is entitled to the relief claimed but in spite of it it has been held

that the Registrar can stay the proceedings. It seems to us that the act of the Registrar in asking the civil court to stay execution proceedings pending before it is a clear encroachment on the powers of the executing court and is in excess of his statutory powers and should have been ignored by the courts.

As a fresh certificate was issued by the Nazim in order to cure a defect that might be said to exist in the original certificate because of its having been sent by the Madadgar Nazim, it is unnecessary to consider the contention of the learned counsel that there was no proper certificate in this case and the proceedings in execution therefore were without jurisdiction.

The result therefore is that this appeal is allowed, the decisions of all the three courts below are set aside and the executing court is directed to proceed with the execution of the decree from the stage at which it was interfered with by the letter received from the office of the Registrar. In the circumstances of this case we will make no order as to costs of the proceedings throughout.

Appeal allowed.

[IN THE SUPREME COURT OF INDIA (HYDERABAD).]

KAPORE CHAND

v.

KADAR UNNISA BEGUM AND OTHERS

[MEHR CHAND MAHAJAN, R. S. NAIK and

KHALILUZZAMAN JJ.]

Muhammadan Law—Dower—Widow in possession of husband's estate in lieu of dower—Whether entitled to priority over creditors—Nature of widow's lien for dower.

A Muhammadan widow in possession of her husband's estate in lieu of her claim for dower with the consent of the other heirs or otherwise is not entitled to priority as against his other unsecured creditors. There is nothing inherent in the very nature of dower which entitles it to priority.

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