

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal under the provisions of Article 154(P)(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 9 of the High Court (Special Provisions) Act No. 19 of 1990

Hewaperuma Kapugamage Champika Jayanath,

“Wijaya”,

Urugamuwa.

Case No. C.A. (PHC) 237/2004

Respondent-Petitioner-Appellant

H.C. Matara Case No. Revision/09/2004

Vs.

M.C. Matara Case No. 33488

P. Manamperi,

Assistant Co-operative Commissioner,

Commissioner General’s Office of Co-operative Development,

Colombo.

Petitioner-Respondent-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Athula Perera for Respondent-Petitioner-Appellant

Chaya Sri Nammuni State Counsel for Petitioner-Respondent-Respondent

Written Submissions tendered on:

Respondent-Petitioner-Appellant on 6th April 2018

Petitioner-Respondent-Respondent on 27th April 2018

Argued on: 27th February 2018

Decided on: 31st May 2018

Janak De Silva J.

This is an appeal against the judgement of the learned High Court Judge of Matara dated 5th October 2004.

The Petitioner-Respondent-Respondent (Respondent) filed a certificate in the Magistrates Court of Matara in terms of sections 59(1)(c) and 59(4) of the Co-operative Societies Law No. 5 of 1972 as amended (Law) to enforce an arbitral award made against the Respondent-Petitioner-Appellant (Appellant). The arbitral award found the Appellant guilty of misappropriation of Rs.13,22,833/82 and interest from the Multi Troller Owners Co-operative Society.

The Appellant filed objections to the said application and took up the following objections:

- (a) The Respondent did not have power to file the certificate
- (b) The arbitrator had acted in excess of his powers
- (c) The Appellant is not bound to pay the amount specified in the certificate

After hearing parties, the learned Magistrate of Matara overruled the objections of the Appellant and held that he was bound to pay the amount set out in the certificate and ordered that it be recovered as a fine. He imposed a sentence of 6 months imprisonment in default of the payment of the said sum.

The Appellant filed a revision application in the High Court of Matara which was dismissed. Hence this appeal.

The arguments made on behalf of the Appellant in this appeal are as follows:

- (a) The Respondent did not have power to file the certificate
- (b) The matter could not have been referred to arbitration

These arguments must be considered after examining the scope of the proceedings in the Magistrates Court upon a certificate filed in terms of sections 59(1)(c) and 59(4) of the Law.

In this scrutiny, it is useful and indeed permissible to examine the interpretation given by Courts to similar provisions found in the repealed Co-operative Societies Ordinance. It is an established rule of interpretation that the legislature is presumed to know the law, judicial decisions and general principles of law. Bindra¹ states as follows:

“The legislature must be presumed to know the course of the legislation, as well as the course of judicial decisions in the country, *a fortiori* of the superior courts of the country. It is a well-settled rule of construction that when a statute is repealed and re-enacted, and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them in the repealed Act, because the legislature is presumed to be acquainted with the construction which courts have put upon the words, when they repeat the same words, they must be taken to have accepted the interpretation put on them by the court as correctly reflecting the legislative mind.”

In *Nilamdeen v. Nanayakkara*² it was held that it is a well-known rule of construction that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted. There is also another rule of construction that where the words of an old statute are made part of a new statute, the legal interpretation which has been put upon the former by courts of law is applicable to those same words in the new statute.

¹Bindra's *Interpretation of Statutes*, 10th ed., page 235

² 76 N.L.R. 169

Section 53A (5) of the Co-operative Societies Ordinance read as follows:

"The Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the amount should not be taken against him and in default of sufficient cause being shown, the amount shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter..." (emphasis added)

Section 59(4) of the Law reads as follows:

"Where a certificate is issued to a Magistrate under paragraph (c) of subsection (1), the Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of the amount should not be taken against him, and in default of sufficient cause being shown, the amount shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with fine only or not punishable with imprisonment, and the provisions of section 291 (except paragraphs (a) and (d) of subsection (1) of that section) of the Code of Criminal Procedure Act, No. 15 of 1979 shall thereupon apply, and the Magistrate may make any direction which, by the provisions of that section, he could have made at the time of imposing such sentence..." (emphasis added)

Section 53A (7) of the Co-operative Societies Ordinance states as follows:

"Nothing in this section shall authorise or require a District Court or Magistrate in any proceedings thereunder to consider, examine or decide the correctness of any statement in the certificate of the Registrar."

Section 59(6) of the Law reads as follows:

"Nothing in this section shall authorize or require a District Court or Magistrate in any proceedings thereunder to consider, examine or decide the correctness of any statement in the certificate of the Registrar."

In *Thambiah Seevaratnam v The Assistant Commissioner of Cooperative Development Jaffna*³ it is stated that the Co-operative Societies Ordinance was repealed by the Co-operative Societies Law, No. 5 of 1972 and that the latter entered into force from 11.10.1972.

The Supreme Court in *Mohideen v. Assistant Commissioner of Co-operative Development, Kalmunai*⁴ was called upon to interpret Section 53A (5) of the Co-operative Societies Ordinance and Pathirana J. held that the only grounds that can be urged before the Magistrate are that –

- (i) the Magistrate has no jurisdiction because the last known place of business or residence does not fall within the local jurisdiction of the Magistrate.
- (ii) that he had paid the amount.
- (iii) that he is not the defaulter in that he is not the person from whom the amount is due.

I am of the view that this is the correct interpretation to be adopted in interpreting section 59(4) of the Law to ascertain the scope of the procedure before the Magistrates Court.

Accordingly, I am of the view that the Appellant cannot argue before the Magistrate that the Respondent did not have the power to file the certificate. An attack on such exercise of power may be accommodated in appropriate proceedings where the vires of the exercise of power can be examined.

In any event, the submission made by the learned counsel for the Appellant that the Respondent did not have the power to file the certificate is untenable in law. This argument is made on the basis that the order made by the Minister of Food, Co-operative, Housing Social Services, Probation and Child Care Services, Women's Affairs and Transport, Southern Province and published in Gazette bearing No. 1,286 dated 2003.04.25 (Order) did not confer power on the Respondent to file a certificate under section 59 of the Law as it does not refer to Column III but only to Column II at two places.

³ 79(II) NLR 104, 105

⁴ 80 N.L.R. 206

The Sinhala version of the said Order is as follows:

1983 අංක 32 හා 1992 අංක 11 දරන පනත්වලින් සංශෝධිත 1972 අංක 5
දරන සමුපකාර සමිති පනත

බලතල පැවරීමේ නියෝග

1989 අංක 12 දරන පළාත් සභා (ආනුෂංගික විධිවිධාන) පනත අනුව 1983 අංක 32 හා 1992 අංක 11 දරන පනත්වලින් සංශෝධිත 1972 අංක 5 දරන සමුපකාර සමිති පනතේ 2(2) වගන්තියෙන් මා වෙත පැවරී ඇති බලතල ප්‍රකාරව දකුණු පළාත් සභාවේ ආහාර, සමුපකාර නිවාස, සමාජසේවා පරිවාස හා ළමාරක්ෂක, වනිතා කටයුතු හා ප්‍රවාහන අමාත්‍ය මුහුදුගම හේවගේ ගුණරත්න විරකෝන් වන මම දකුණු පළාතේ සමුපකාර සංවර්ධන කොමසාරිස් හා සමුපකාර සමිති රෙජිස්ට්‍රාර්වරයාට සහාය වීමට පත්කර ඇත්තාවූ පහත දක්වා ඇති උපලේඛනයේ 1 වැනි තීරුවේ සඳහන් අය වෙත 1983 අංක 32 හා 1992 අංක 11 දරන පනත්වලින් සංශෝධිත 1972 අංක 5 දරන සමුපකාර සමිති පනතේ හා ඒ යටතේ පනවා ඇති රීති යටතේ සමුපකාර සමිති රෙජිස්ට්‍රාර් වෙත පැවරී ඇත්තාවූ එකී උපලේඛනයේ 11 තීරුවේ සඳහන් සියලු බලතල එකී උපලේඛනයේ 11 වැනි තීරුවේ සඳහන් දින සිට මෙයින් පවරමි.

It is true that the Order refers only to Column II at two places when it should have referred to both Columns II and III. However, it firstly states “11 තීරුවේ සඳහන් සියලු බලතල” (emphasis added) and then “11 වැනි තීරුවේ සඳහන් දින සිට”(emphasis added). Clearly there is a misprint or omission when “II” is used twice. But the words that have been used are “සියලු බලතල” and “සඳහන් දින සිට” which makes it clear that the Minister was actually conferring the powers set out in Column III to the Respondent including powers under section 59 of the Law from the dates specified in Column II. The Order must be construed as a whole to ascertain its true meaning.

The other ground urged by the learned counsel for the Appellant is that in terms of section 58(1) of the Law, a registered society can make a reference to the Registrar to appoint an arbitrator only where there is a dispute touching the business of the registered society but the dispute in the instant case pertains to a fraud which is not covered by the said provision.

For the reasons set out above, this is not a position that can be taken before the Magistrates Court. In any event, the Appellant took part in the arbitration proceedings without demur and cannot now contest the validity of such proceedings.

For the foregoing reasons, I see no reason to interfere with the judgement of the learned High Court Judge of Matara dated 5th October 2004.

Appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal