

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

Deputy Commissioner of Corporative
Development of the Southern Province,
No.147, Pettigalawatta, Galle.

Plaintiff.

Vs.

C.A (PHC) 137/2013

HC/Colombo/21/2013 (Rev)

MC/Colombo /94759/5/10

Sri Lanka Consumer Corporative Society's
Federation Ltd of No.11, Saunders Place,
Colombo 12.

Respondent.

AND

Sri Lanka Consumer Corporative Society's
Federation Ltd of No.11, Saunders Place,
Colombo 12.

Respondent-Petitioner.

Vs.

Deputy Commissioner of Corporative
Development of the Southern Province,
No.147, Pettigalawatta, Galle.

Plaintiff –Respondent.

AND BETWEEN

Sri Lanka Consumer Corporative Society's
Federation Ltd of No.11, Saunders Place,
Colombo 12.

Respondent-Petitioner-Appellant.

Vs.

Deputy Commissioner of Corporative
Development of the Southern Province,
No.147, Pettigalawatta, Galle.

Plaintiff –Respondent- Respondent.

Before : **Prasantha De Silva, J.**

Khema Swarnadhipathi, J.

Counsel: Mr. Rajin Gooneratne S.C for the Plaintiff-Respondent-Respondent.
No representation for the Respondent-Petitioner-Appellant.

Taken up for
argument on : 30.07.2021

Decided on: 14.10.2021

Prasantha De Silva, J.

Judgment

When this Appeal was taken up for Argument, the Counsel for the Appellant was absent and unrepresented. Upon perusal of the Journal Entries of this Appeal, it is observed that both Parties

had filed Written Submissions and the Appeal had been fixed for Argument for 30/07/2021 with the consent of both parties. Even though this Appeal was preferred in the year 2013, it appears that the Appeal was first fixed for argument on 03/09/2015 and re-fixed for argument over ten times. In the circumstances, we decided to take up this Appeal for argument. At the hearing, we allowed the Learned Counsel for the Respondent to make Oral Submissions.

The Respondent- Petitioner- Appellant preferred this Appeal, against the Order of the High Court dated 11/10/2013 and to set aside the Order of the Magistrate's Court dated 21/01/2013 and to send the case back to the High Court for a fresh hearing.

The aforesaid Plaintiff- Respondent- Respondent [hereinafter referred to as the Plaintiff], the "Deputy Commissioner of Cooperative Development of the Southern Province", instituted action bearing No. 94759/5/10 in the Magistrate's Court of Colombo against the Respondent- Petitioner- Appellant, "Sri Lanka Consumer Corporative Society's Federation Ltd." [hereinafter sometimes referred to as the Appellant], in terms of Section 59(1) (c) and Section 59(4) of the Corporative Societies Act No. 5 of 1972 as amended, by filing a certificate to recover Rs. 18, 945, 659.32/- from the Appellant.

Subsequently, the Plaintiff filed an amended certificate in terms of The Corporative Societies Law and sought to recover Rs. 20, 936, 863/- from the Appellant.

It was the position taken up by the Plaintiff that, "Rathgama Multipurpose Corporative Society Ltd" [MPCS], had deposited Rs. 2, 500,000/- with the Appellant, and since the Appellant did not repay the said money with the interest accumulated, the matter had been referred for Arbitration.

After the Arbitration inquiry, an award of Rs. 18, 945, 659.32/- had been made against the Appellant. It is observed that the Appellant had not preferred an appeal to the Commissioner in terms of Section 58(3) of the Act. Therefore, in terms of Section 58(6) of the Act the said Award of the Arbitrator is final and conclusive. In as much as the Appellant had failed to pay the money on the due date, the Complainant “Rathgama Multi-Purpose Cooperative Society” had requested from the Commissioner to recover money from the Appellant through Court Proceedings. Accordingly, the Commissioner had issued a Certificate and instituted an Action in the Magistrate’s Court of Colombo in accordance with Section 59(1) of the Act.

It appears that the Respondent-Petitioner-Appellant had objected to the enforcement of the said certificate and raised several Preliminary Objections with regard to the maintainability of the Application of the Plaintiff. The Plaintiff objected to the Preliminary Objections raised by the Appellant being entertained by the Learned Magistrate.

After hearing of the Oral Submissions of the Appellant and the Plaintiff, the Learned Magistrate had delivered the Order, rejecting the Preliminary Objections of the Appellant and had allowed the Plaintiff to recover from the Appellant the money referred to in the certificate by way of a fine. It was further ordered that, if the said fine was not paid by the Appellant, to impose a rigorous imprisonment of 6 months to be served by the officers of the Appellant society.

Being aggrieved by the said Order of the Learned Magistrate, the Appellant had invoked the Revisionary Jurisdiction of the Provincial High Court of Colombo and on 11/10/2013 the Learned High Court Judge had dismissed the Application of the Appellant, even without issuing Notice on

the Plaintiff. Thereafter, the Appellant has preferred this Appeal against the said dismissal of the Application by the Learned High Court Judge.

In terms of Section 2(1) of the Cooperative Societies Act No. 5 of 1972, there may be appointed a Registrar of Corporative Societies for Sri Lanka or any portion thereof and such number of Deputy, Senior Assistant, or Assistant, Registrars as may be necessary.

Section 2 (2) of the Act provides that, the Minister may, by general or special Order, confer on any Deputy, Senior Assistant or Assistant Registrar all or any of the powers of a Registrar under this Law or under any rules made thereunder.

The person appointed to be, or to act for the time being as, the Commissioner of Co-operative Development shall have and may exercise the same powers as are vested in the Registrar of Co-operative Societies by this Law and by any rules made or deemed to be made thereunder as mentioned in Section 2 (3).

Section 2 (4) reads thus, each of the persons appointed to assist the Commissioner of Cooperative Development shall have and may exercise such of the powers of the Registrar under this Law and under any Rules made or deemed to be made thereunder as may be specified by the Minister in any general or special Order made under this Section.

Accordingly, the Provincial Commissioner of Cooperative Development of the Southern Province is empowered to implement provisions of the said principle Act No.05 of 1972.

It appears that a dispute arose between the two societies namely “Rathgama Multipurpose Cooperative Society” and “Sri Lanka Consumers Corporative Society Ltd.”, due to the non-payment of fixed deposits and the interests to the Rathgama MPCS by the said Sri Lanka

Consumers Cooperative Society Ltd. On the Complaint made by the Rathgama Multipurpose Cooperative Society to the Commissioner of Cooperative Development, the matter was referred for Arbitration in terms of Section 58(2) (b) of the said Act.

Both parties appeared before the Arbitrator, and the Arbitrator having considered the facts presented by both parties, had made the Arbitration Award on 11/05/2010 in favour of the Respondent.

It is relevant to note that the Appellant had not submitted an Appeal as per Section 58(3) of the Cooperative Societies Act to the Commissioner against the Award of the Arbitrator. According to Section 58(6) of the Act, the Award of the Arbitrator is final in the event that no Appeal is preferred.

Since, the Appellant had failed to pay the money by the date stipulated in the Award, the Complainant of the dispute “Rathgama Multipurpose Cooperative Society” had made a request to the Commissioner to recover the money from the Appellant through Court.

Consequently, the Deputy Commissioner of Cooperative Development of the Southern Province, being the Plaintiff, instituted action in terms of Section 59(1) (c) of the principle enactment of Cooperative Societies Act No. 5 of 1972 by filing a certificate in the Magistrate’s Court of Colombo against the Respondent-Petitioner-Appellant to recover the amount due with the interest and cost of Arbitration.

It is seen that the Appellant had taken up a Preliminary Objection before the Magistrate, that the Respondent cannot maintain the impugned Action by filing a certificate under Section 59(1) of the said Act No.05 of 1972.

The Learned Magistrate held that in terms of Section 59(6) of the Act, the Learned Magistrate is not vested with Jurisdiction to consider the correctness of any statement contained in the certificate issued by the Registrar.

It appears that the Appellant relied upon the case of *K. A. Dayawathie Vs D. S. Edirisinghe and 04 others [S.C F.R No.241/08]* decided by the Supreme Court on 01/06/2009. The Appellant had taken up the same position before the Learned High Court Judge, when supporting the Revision Application bearing No. HCRA 21/2013 made against the Order of the Learned Magistrate.

In the said case, *K. A. Dayawathie Vs D. S. Edirisinghe* the Supreme Court held that the Commissioner of Labour has no jurisdiction or power under the EPF Act to file a certificate in the Magistrate's Court in terms of Section 38(2) of the Employees Provident Fund Act [here in after referred to as the EPF Act] without first proceeding under Section 17 and thereafter under Section 38(1) of the Act.

The Learned High Court Judge emphasized in his Order that the basis of the decision of the above mentioned case depended upon the wordings in Section 38(2) of the EPF Act, which stated that the Commissioner may issue a certificate containing particulars of the sum due from the employer as EPF, if it is the opinion that it is impracticable or inexpedient to recover that sum under Section 17 or under Section 38(1).

Although the Appellant relied on the aforementioned Judgment of the Supreme Court, it is important to note that the relevant Section in the Cooperative Society's Law No.05 of 1972 does not have the same wordings and hence the requirement to consider whether it is impracticable or inexpedient does not arise with regard to a matter under Section 59 of the Cooperative Society's Law No.05 of 1972. It is open to the Registrar to file a certificate in the Magistrate's Court at his own discretion as there is no mention in Section 59 about such a requirement, unlike in Section 38(2) of the EPF Act. Therefore, this Court is of the opinion that *Dayawathie's Judgment (supra)* has no application to this case.

It appears that in the Petition of Appeal, the Appellant had raised a Preliminary Objection that as per the 13th Amendment to the Constitution, the subject of "cooperative societies" is a devolved subject and the Plaintiff being appointed by the Governor of the Southern Province in terms of Section 32 of the Provincial Councils Act, the Plaintiff can only look after matters within the province. In this circumstance, it was contended by the Appellant that the Plaintiff has no power to issue the certificate to the Learned Magistrate of Colombo, which is situated outside the jurisdiction of the Plaintiff.

Apparently, the Plaintiff had taken up the position before the Magistrate's Court of Colombo, although the subject of cooperative societies is a devolved subject according to the 13th Amendment to the Constitution, since the Southern Provincial Council had not made any statute regarding the impugned subject in terms of Article 154 (G) (1) read with Article 154(G) (8), it is apparent that the applicable Law relevant to the impugned subject is the Principle Enactment Act No.05 of 1972 Cooperative Societies Law.

In this instance, the Plaintiff being the Deputy Commissioner of Cooperative Development of Sothern Province, is empowered under Section 2(4) of the Principle Enactment of the said Act No. 05 of 1972, read with Section 14(c) of the Interpretation Ordinance, to institute Action against the defaulter, [Respondent-Petitioner-Appellant] to recover money due to the “Rathgama Multipurpose Cooperative Society”, by issuing a certificate at the Magistrate’s Court of Colombo.

Thus the said Preliminary Objection regarding the maintainability of the instant action, cannot be sustained in Law. Hence, the said Objection is overruled.

Furthermore, the Respondent-Petitioner-Appellant has taken up the following Objections in the Petition of Appeal.

- a) That the provisions in Penal Law cannot be applied in recovering the alleged sum of money.
- b) That in the circumstances of the dispute, when it is in between two different Corporative Societies, one cannot resort to the provisions in Criminal Law.
- c) That the Plaintiff must firstly take steps under Section 59(3) of the Corporative Societies Act and if failing, the Plaintiff could seek relief from the Magistrate’s Court.

It was the contention of the Appellant that the Plaintiff has to take steps first under Section 59(3) of the Act and if failing only the Plaintiff could seek relief from the Magistrate’s Court. Thus, a certificate filed under Section 59(1) (c) of the said Act to recover dues with interest and cost of Arbitration as a fine is *ex facie* bad in Law.

It was submitted on behalf of the Appellant that in terms of Section 59(1) of the Act, there are three remedies available to the Registrar to recover money due from the defaulter.

Section 59(1) (a), (b) and (c) stipulates that,

- (a) issue a certificate to a Government Agent, Assistant Government Agent, Fiscal or Deputy Fiscal, containing particulars of such sum, together with costs and interest, and the name of such defaulter; or
- (b) issue a certificate to a District Court having jurisdiction in any District where the defaulter resides or in which any property movable or immovable owned by the defaulter is situated, containing particulars of the sum due together with costs and interest, if any, and the name of the defaulter; or
- (c) issue a certificate containing particulars of the amount due and the name and last-known place of business or residence of the defaulter to a Magistrate having jurisdiction in the division in which such place is situated.

In view of the aforesaid Sub Sections 59(1) (a) and (b), if the Registrar issues a certificate under (a) and (b) the sum could be claimed with costs and interest.

Therefore, it was argued that if the Registrar is taking steps to issue the certificate in terms of Section 59(1) (c) of the Act, the Registrar is entitled to recover the sum due only and the Registrar is not empowered to recover the costs and the interest since the interest and costs part referred to in Sections 59(1) (a) and (b) are not indicated in Section 59(1) (c). Thus Section 59(1) (c) is silent over costs and interest.

It was pointed out by the Appellant that the words used in Section 59(1) (a) are, SUCH SUM TOGETHER WITH COSTS AND INTEREST and the words used in Section 59(1) (b) are, THE

SUM TOGETHER WITH COSTS AND INTEREST, and the words used in Section 59(1) (c) is **THE AMOUNT DUE.**

In this respect, it was argued on behalf of the Appellant that in terms of Sections 59(1) (a) and (b) the Government Agent, Assistant Government Agent, Fiscal or Deputy Fiscal or the District Court have no Jurisdiction to recover the sum due as a fine and further they have no Jurisdiction to impose Jail sentence, if the defaulter defaults the payment.

However, it is worthy to note that if the certificate is issued under Section 59(1) (c) to the Magistrate's Court, the amount shall be deemed to be a fine imposed by a sentence on such defaulter for an offence punishable with fine and if the defaulter defaulted the payment of fine, the Learned Magistrate is entitled to impose a sentence on the defaulter.

Nevertheless, it was contended by the Appellant that, when enacting Section 59(1) (c), the Legislature did not intend to include interest and or costs, hence, the Respondent is entitled only to recover the sum awarded by the Arbitrator and is not entitled to recover the interest and the cost of Arbitration.

The attention of Court was drawn to the impugned certificate issued by the Registrar. It is seen that the Arbitrator's award is Rs. 17, 735, 602.93/- and further added Rs. 3, 180, 260 /- as interest accrued up to the filing of the certificate and a sum of Rs. 21, 000/- as cost of Arbitration.

Therefore, it was the contention of the Appellant that in terms of Section 59(1) (c) of the Act, the Registrar is not entitled to recover the accrued interest and the cost of Arbitration.

Furthermore, it was submitted that the issue of Jurisdiction is conditional upon the document issued by the Registrar in terms of Section 59(1) being a certificate in terms of the Sub Sections (a), (b) and (c) of the same Section. As such the requisites of a certificate under Sub Sections (a) and (b) require it to contain “Particulars of the sum due together with costs and interest and the name of such defaulter”.

Moreover, the Learned Counsel for the Appellant argued that Sections 59(1) (a) and (b) should be distinguished from Section 59(1) (c). Thus the said Sub Sections (a) and (b) deal with the recovery process within a Civil Jurisdiction and therefore permits the recovery interest along with the Capital due, while Sub Section (c) of Section 59(1) being capable of imposing Criminal Liability upon the defaulter and by its very nature being fined does not permit the inclusion of the interest due in the certificate.

In this respect, the Court draws the attention to “Maxwell” on the Interpretation of Statutes [12th Edition] at pages 28 and 29 which states that,

“The rule of construction is “to intend the Legislature to have meant what they have actually expressed”. The object of all interpretation is to discover the intent of Parliament, “but the intention of the Legislature must be deduced from the language used” Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise”.

To substantiate the aforesaid view, it was also cited W. S. Bindra on Interpretation of Statutes [12th Edition] at pages 35-354, which emphasized that “When the Language of a statute is plain and unambiguous, it would not be open to the Courts to adopt a hypothetical construction on the ground that such a construction is more consistent with the alleged object and policy of the Act”.

On this basis, it is apparent that, where the language of the Act is clear and unequivocal, such meaning that flows from the language must prevail.

Nevertheless, it was the position taken up on behalf of the Appellant that the language of Section 59(1) (c) of the Act is clear as to the requisites of a document issued by the Registrar, must contain to be considered a certificate under the said Sub Section. The inclusion of the interest and cost to the total amount due in a document issued under Section 59(1) (c) of the Act negates it from being considered as a certificate under the Section 59(1) (c).

Therefore, when enacting Section 59(1) (c), the Legislature did not intend to include the interest of the award, as such the certificate filed in the Magistrate's Court Colombo is defective.

In this instance, it is noteworthy that the amount recovered under Section 59(1) (c) as a fine and if there is a failure to recovery, the Learned Magistrate is empowered to impose an imprisonment on the Accused-Defaulter.

In this premise the Counsel for the Appellant argued that the Complainant cannot seek interest in a Criminal Case. Therefore, if the Registrar resorts to Section 59(1) (c) of the Cooperative Societies Act, the certificate should not contain interest and cost of Arbitration.

However, the Court is not inclined to accept the said argument of the Appellant. The Court observes that in Sub Sections 59(1) (a) and 59(1) (b) the used words are, "such sum together with cost and interest". Nevertheless, Sub Section 59(1) (c) has used the word "amount due", apparently

the words “cost” and “interest” used in the Sub Sections (a) and (b) are not present in sub Section (c).

In this context, assuming that Sub Sections (a) and (b) used the words “such amount” instead of the words “such sum”, it should be read as “such amount together with costs and interest”. In plain reading, it is clear that the word “sum” refers to the Arbitrator’s award only.

As such, it is worthy to note in Sub Sections (a) and (b) the Legislature has used the words “a sum together with costs and interest” which means to recover the whole amount, the sum mentioned in the award, interest and cost due from the defaulter.

Assuming that the Legislature used the words in Sub Section (c), “a sum of money recovered as a fine”, no cost or interest can be charged as a fine. According to the Oxford Compact Dictionary and Thesaurus [Oxford University Press 1997], definition of the word “amount” is “total number”. The synonyms to the word “amount” are “entirety, total value, whole” etc. Hence, it is clear that the Legislature in its wisdom used the words in Sub Section (c) “amount due”, including the costs and interest together to be recovered as a fine.

Accordingly, we hold that the impugned certificate filed under Section 59(1) (c) is not defective and is valid in Law. Hence, the Learned Magistrate was correct in rejecting the Objections raised by the Appellant.

Hence, the Plaintiff-Respondent-Respondent can resort to the provisions in the Penal Law to recover money in terms of Section 59 (1) (c) of the Act as a fine.

This position is clearly established by the amendment of Section 59(4) of the Principle Act, by the amending Act No.11 of 1992, which states that,

“Any defaulter sentenced to a term of imprisonment in default of the fine imposed in accordance with Section 291 of the Code of Criminal Procedure Act No.15 of 1979, shall not be absolved from the payment of any sum of money mentioned in the certificate specified in Section 59(1) (c)”.

In view of the said amended Section 59(4), it is clear that serving of jail sentence imposed due to the failure to pay a fine shall not be a bar to collect the moneys due upon an Arbitral Award made under the Cooperative Societies Act.

It is interesting to note that in the Case of *Ambawa Thrift Credit Co-operative Society Vs D. M. Sumana Dissanayake and Co-operative Development Commissioner* [C.A (PHC) 168/2011-C.A Minutes 16.01.2015], *K. T. Chitrasiri, J.* emphasized that in terms of Section 291(2) of the Criminal Procedure Code, the Legislature has permitted the particular Co-operative Society to recover the monies due from persons concerned despite the fact that the particular person had served the jail sentence imposed due to the non-payment of the fine that was imposed [Emphasis added].

Therefore, it is clear that in terms of Section 59(1) (c), the amount due is the sum together with costs and interest which can be recovered as a fine in the like manner in Sections 59(1) (a) and (b).

It is seen in the instant Case, the Learned Magistrate acted upon in terms of Section 59(4) of the Act and directed the Respondent-Petitioner-Appellant to pay the amount referred in the impugned certificate as a fine.

Further, it was Ordered that the Appellant be imprisoned for 6 months in the event of failure to pay the amount due as a fine.

As such, the Preliminary Objections raised on behalf of the Appellant is devoid of any merit.

Hence, we overrule all the Objections raised by the Appellant and uphold the Orders of the Learned High Court Judge dated 11.10.2013 and the Order of the Learned Magistrate dated 21.10.2013 and dismiss the Appeal with costs.

JUDGE OF THE COURT OF APPEAL

Khema Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL