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June 20

HUSSEIN SHEFIK v. THE FIRST LIMASSOL CO-OPERATIVE SAVINGS BANK, LTD., OF LIMASSOL.

[HALLINAN, C.J., AND ZEKIA, J.]

(June 20, 1953)

HUSSEIN SHEFIK, *Appellant*,

v.

THE FIRST LIMASSOL CO-OPERATIVE SAVINGS BANK, LTD., OF LIMASSOL, *Respondents*.

(*Civil Appeal No.* 3993.)

Co-operative Societies Law (*Cap.* 198) *s.* 53—*Meaning of "dispute"—Claim against person when no longer an officer of society—Quasi-judicial tribunal acting without jurisdiction—Power of District Court to control by declaratory judgment.*

The plaintiff was the secretary of the defendant Co-operative Savings Bank from 1946 to the end of 1948. During that time the assistant secretary embezzled certain funds and the defendants alleged that the plaintiff was liable to make good this loss. After the plaintiff had ceased to be secretary, the dispute was referred to an arbitrator under section 53 of the Co-operative Societies Law (Cap. 198). The plaintiff claimed a declaration (*inter alia*) that the dispute could not be dealt with under section 53. The trial Court held :—

(1) this was a dispute touching the business of the society and could be dealt with under section 53 ; and

(2) it was immaterial that the plaintiff had ceased to be an officer of the society when the dispute was referred under section 53 ; it was sufficient that the plaintiff was an officer when the funds were embezzled. The plaintiff appealed.

Held on appeal : (1) An issue as to whether a quasi-judicial authority has acted without jurisdiction can be determined on a claim for a declaration in the District Court. The proceedings in the District Court were not misconceived.

(2) It was immaterial that the plaintiff had ceased to be an officer of the society when the dispute was referred under section 53.

(3) The dispute was not one touching the business of the society within the meaning of section 53, since it did not concern the internal administration of the society. The appellant was therefore entitled to the declaration sought.

Case sent back to trial Court.

Appeal by plaintiff from the judgment of the District Court of Limassol (Action No. 130/51).

Sir Panayiotis Cacoyannis for the appellant.

Ali Dana for the respondents.

The judgment of the Court was delivered by :

HALLINAN, C.J. : Appellant in this case was the Secretary of the respondent Co-operative Savings Bank from May 1946 to the end of December 1948. During this time the respondent Bank alleges that certain funds were embezzled by the Assistant Secretary and that the appellant was liable to the respondents for the loss of these funds. The respondents referred this dispute to the Registrar of Co-

operative Societies for his decision under section 53 of the Co-operative Societies Law (Cap. 198) and the Registrar under sub-section 2 of that section referred the matter for disposal to an arbitrator. The appellant then instituted these proceedings in the District Court claiming, *inter alia*, a declaration that the reference to arbitration was invalid.

The issue before the trial Court was whether the dispute between the parties was a dispute within the meaning of section 53 of the Co-operative Societies Law. The Court held that the dispute was a dispute within the meaning of that section and dismissed the appellant's claim.

The matters argued on this appeal are :—

First, whether the appellant's claim for a declaration was his proper remedy or whether these proceedings were misconceived.

Secondly, whether the dispute in this case could be the subject of a reference under section 53.

In our view the proceedings were not misconceived. An arbitration under section 53 is a statutory arbitration. This Court has recently held in Civil Appeal No. 3915, *The First Limassol Co-operative Stores Society* v. *Yiannis Christofides*, decided on the 15th November, 1952, that the Courts can only exercise their powers to set aside, under section 20 of the Arbitration Law (Cap. 5), when the reference to arbitration is made under an arbitration agreement or under an order of the Court. The powers of the Court under section 20 do not apply where the reference to arbitration is made under powers conferred by statute. In the case of the First Limassol Co-operative Stores Society a passage from Russell on Arbitration, 15th Edition, page 101, was cited regarding the jurisdiction of the Courts to set aside an arbitration award where the proceedings had been contrary to natural justice :

> " Where the Acts " (that is to say the Arbitration Acts) " do not apply, however, there can be no setting aside of an award on motion to the Court ; the proper remedy for injustice will be by application for a prerogative order, or by whatever equivalent procedure is laid down by any statute governing the tribunal concerned."

Prerogative orders can only be obtained in Cyprus from the Supreme Court.

Counsel for the appellant cited the recent case of *R.* v. *The Disputes Committee of the Joint National Council for the Craft of Dental Technicians and Others*, 1953, 1, All England Law Reports, page 237, where it was held that the Court had no power to direct issues or orders of *certiorari* or prohibition addressed to an arbitrator directing that a decision by him should be quashed or that he be prohibited from proceeding in an arbitration. But the arbitration

in that case was not a statutory arbitration ; the arbitrator was not acting under powers conferred by statute; the reference to arbitration was made under a condition contained in an indenture of trusteeship. The Supreme Court has power to control the proceedings of a statutory arbitrator by prerogative order. Where the matter referred to arbitration is not within the statutory provision from which the arbitrator purports to derive his authority, then the whole proceedings are void for want of jurisdiction and the party to an arbitration objecting to such jurisdiction may either apply to the Court for a prerogative order or to the District Court for a declaration declaring that the proceedings are invalid. In the case of *Cooper* v. *Wilson and Others*, 1937, 2. K.B., 309, a statutory committee purported to enquire into certain charges against a sergeant of police after he had resigned from the force and the Court of Appeal held that the ex-sergeant was entitled to a declaration that the proceedings were void. Greer, L.J., at page 321 said:

> " Nor do I think that the power which he " (the ex-police sergeant) " undoubtedly possessed by obtaining a writ of *certiorari* to quash the order of his dismissal prevents his application to the Court for a declaration as to the invalidity of the order of dismissal."

The question of whether the ex-police sergeant could also have the proceedings of the enquiry set aside as being contrary to natural justice was also discussed and, although the matter was not directly decided, the majority of the Court were of opinion that this issue as to natural justice might also be by a declaration. We are not here bound by the view of the majority of the Court of Appeal on a matter which was not necessary for the decision and prefer the view expressed by MacNaghten J., in his dissenting judgment :

> " The declaration prayed for in this action is a declaration that the resolution of the Watch Committee confirming the decision of the Chief Constable was invalid and ought therefore to be quashed, and though I fully accept the view that the power of the Court under Order 25 to make declaration as to the rights of parties is almost unlimited, the limit is in my opinion reached when it is sought to obtain a declaration that the decision of a Tribunal exercising judicial or quasi-judicial functions ought to be quashed . . . . . With very great respect I venture to think that in such a case an application for a writ of *certiorari* was the proper and only remedy available to the plaintiff ".

Following the passage already cited from Russell on Arbitration, this Court has already held that where it is sought to invalidate an award on the ground of its being contrary to natural justice the proceedings should be by

application for a prerogative order. In the present proceedings where it is sought to declare a reference to arbitration invalid for want of jurisdiction or as being in excess of jurisdiction we consider the proceedings can be instituted in the District Court for a declaration that the reference is invalid.

In submitting that the dispute between the parties in this case did not fall within section 53 of the Co-operative Societies Law, counsel for the appellant submitted: First, that since a dispute arose when the appellant was no longer a secretary of the Society it was not a dispute which fell within section 53; and, secondly, that the dispute did not touch the business of the Registrar of the Society.

With regard to the first point, it is clearly the intention of the Legislative Authority that the matters to be referred to arbitration are transactions which occur when a person with whom the society has a dispute was an officer, agent or servant of the society; it is immaterial that such a person ceases to be an officer, agent or servant of the society when the dispute is referred to the Registrar for his decision. Any other interpretation would enable an officer, agent or servant of the society to evade the clear intention of the legislative authority by terminating his connection with the society before the society has an opportunity to refer the dispute to the Registrar.

The second point argued by counsel raises a question of greater difficulty. The jurisdiction of the Courts is ousted where under section 53 a dispute is referred to the Registrar or by him to an arbitrator, and the Courts have always strictly construed legislation of this kind which preclude an aggrieved person from obtaining a remedy in the Courts. Section 53 resembles section 68 of the Friendly Societies Act, 1896, and previous legislation which was superseded by that Act. There have been many decisions on the object and scope of this section 68 and its predecessors. The authorities point to the conclusion that the legislature intended this section to regulate disputes arising out of the internal administration of a friendly society. In the case of *Heard* v. *Pickthorn* 1913, 3 K.B.D., 299, a friendly society had refused to pay a claim for benefit in respect of illness by purporting to modify its rules in a manner which was *ultra vires*. The aggrieved party brought proceedings in Court for a declaration that certain resolutions of the friendly society were *ultra vires*. He failed in the High Court but succeeded on appeal. Bray J. in his judgment in the Court of Appeal at page 313 said:

"The learned judge," (that is the trial judge) "I think, put the right question to himself, as to whether this was such an illegal act as the Courts will interfere with and restrain, notwithstanding the arbitration provision;

or whether it was a mere matter of internal administration. The mistake which I think he made was in coming to the conclusion that he did, that this was a matter of internal administration. It was not, in my opinion, a matter of internal administration. For some reason or another which I need not stop to ascertain, this society seemed to have desired to evade or restrict the existing rule, which had been passed and approved by the Insurance Commissioners . . . . . That is a matter which it seems to me is not internal administration, but a matter of vital importance, as improperly restricting the rights of insured persons. That being so, it seems to me that we have jurisdiction to decide this question ".

Again in *Quinn* v. *National Catholic Benefit and Thrift Society's Arbitrations*, 1921, 2 Chancery Division, 313, it was held :

> " No question as to the illegality of the rules of an approved friendly society can properly be made the subject of an arbitration under section 67 of the National Insurance Act, 1911 ".

In the present case it is clear from the counterclaim of the respondents contained in their statement of defence that they are claiming damages for negligence or breach of duty against the appellant. The issues clearly do not concern the internal administration of the society but primarily concern the obligation of the appellant to answer for the tortious acts of an officer, agent or servant. This involves matters of law which the courts of the Colony are best qualified to determine. I do not think that we can presume that it was the intention of the legislative authority to compel the appellant to have these issues tried by the Registrar or an arbitrator appointed by him. The provisions of section 50 of the Co-operative Societies Law (Cap. 198) support this conclusion. There, where in the course of the winding up of a registered society it appears that an officer of the society misappropriated the society's property, a Registrar may examine into the officer's conduct and require him to restore the property or pay compensation. It is noteworthy that whereas a dispute under section 53 must be referred to the Registrar for his decision, the Registrar under section 50 has discretion to use or not to use his powers under that section ; moreover the powers given to the Registrar under section 50 do not exclude the jurisdiction of the Courts. Since then the jurisdiction of the Courts is not excluded with regard to tortious acts by an officer discovered through the winding up proceedings, it seems reasonable to assume that the legislative authority did not intend to exclude the jurisdiction of the Courts regarding such acts when the society is not being wound up. In my view those proceedings were not misconceived, for the trial Court had power to make a declaration that the matter in

dispute between the parties was not a dispute within the purview of section 53 ; but the trial Court was not correct in concluding that the dispute must be determined under that section. The appellant is therefore entitled to a declaration that the dispute in this case is not a dispute which can be referred to the Registrar under section 53, and that the order of the Registrar appointing an arbitrator and the proceedings of the arbitrator are *ultra vires* and void.

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HUSSEIN SHEFIK
v.
THE FIRST LIMASSOL CO-OPERATIVE SAVINGS BANK, LTD., OF LIMASSOL.

The case is sent back to the trial Court to hear and determine the appellant's claim for damages and the respondents' counter-claim. The parties to be at liberty to call such further evidence as they deem fit.

Respondents shall pay the appellant's costs in this appeal.

ZEKIA, J: I agree.

[HALLINAN, C.J., AND ZEKIA, J.]

(June 22, 1953)

1953
June 22

AKIL HUSSEIN ARNAOUT
v.
EMINE HUSSEIN ZINOURI.

AKIL HUSSEIN ARNAOUT OF PLATANISSO, *Appellant,*

v.

EMINE HUSSEIN ZINOURI OF PLATANISSO, *Respondent.*

(*Civil Appeal No.* 4012).

Unregistered prescriptive title—Purchaser for value of registered title—No enquiries before purchase—No estoppel against prescriptive owner.

The defendant had been in possession of the land in dispute for about 30 years. The plaintiff by purchase in 1950 became registered as the owner of land which included the land in dispute. The trial Court held that the defendant had a prescriptive right; the plaintiff knew of this right and was not a purchaser for value without notice. The defendant was declared entitled to the land.

Held on appeal: The defendant by failing to register her prescriptive right was not estopped from claiming against the registered owner who was a purchaser for value since the purchaser had failed to make reasonable enquiry before purchase, and the principle in *Michael and others* v. *Nikoli and others* (VIII C.L.R., 113) did not apply.

Appeal dismissed.

Appeal by plaintiff from the judgment of the District Court of Famagusta (Action No. 262/52).

M. K. Haji Demetriou for the appellant.

S. Emphieji for the respondent.