1937 *Present :* **Moseley J. and Fernando A.J.**

KANDY CO-OPERATIVE URBAN BANK *v.* SENANAYAKE *et al*

114—D. C. Kandy, 124.

Co-operative Societies Ordinance, No. 16 of 1936—Award of arbitrator—Application for execution of award—No notice to respondent—Civil Procedure Code, s. 224.

There is no legal requirement that notice of an application for execution of an award made by an arbitrator under section 45 of the Co-operative Societies Ordinance should be issued to the party affected.

THIS case was instituted as a test case to find out whether notice should be issued to the respondents before a writ is granted in terms of the award of an arbitrator under section 45 of the Co-operative Societies Ordinance, No. 16 of 1936. The learned District Judge held that notice must issue and the plaintiff-appellant appealed against that order.

J. E. M. Obeyesekere, C.C., for plaintiff, appellant.—Section 45 (1) (*b*) of the Co-operative Societies Ordinance, No. 16 of 1936, provides the method of settling disputes between the society and a member. The dispute was referred to the Registrar, who in terms of section 45 (2) referred it to an arbitrator. The Co-operative Societies Ordinance, No. 34 of 1921 is repealed, but the rules made under section 37 of that Ordinance are kept alive by section 52 (2) of the 1936 Ordinance. They are published in *Gazette* No. 8,179 of November 30, 1935. Application was made under rule 29 (*k*) to the District Court of Kandy to enforce the award of the arbitrator, which would be enforced in the same manner as a decree of the Court. Hence section 225 of the Civil Procedure Code, 1889 applies. There is no provision in that section to serve notice of application to the judgment-debtor. The only section in the Civil Procedure which provides for such notice is section 347.

A certified copy of the award is sufficient to inform the Court of the award. The Court cannot inquire whether the award is correct or not. Under section 45 (5) of the Co-operative Societies Ordinance, No. 16 of 1936, the award is final. If any adjustment is made in the award it must be stated in the application for writ as required by section 224 of the Civil Procedure Code.

The Court is merely aiding the execution of the award. The learned District Judge assumed that the principle in *Mackie v. The Commissioner of Stamps*[1], and in *Gunawardene v. Gunasekera*[2], namely, that no order must be made affecting a person without hearing him, prevented him from issuing writ without notice on the respondent. Here the arbitrator heard the respondent and his order is final if no appeal is preferred. The Court has to perform a mere ministerial duty. He is asked to help in the collection of the money. There is no legal requirement to issue notice. The provisions laid down in section 224 of the Civil Procedure Code are sufficient to prevent any miscarriage of justice. If the material before the Court is sufficient, the writ must issue, but if it is not sufficient, it can direct further material to be placed before it.

Cur. adv. vult.

[1] *(1935) 15 Ceylon Law Rec. 123.*

[2] *(1922) 1 Times Law Rep. 90.*

November 11, 1937. MOSELEY J.—

This is an appeal against the order of the District Judge, Kandy, upon an application by the appellant for a writ of execution upon the award of an arbitrator, to whom the matter had been referred, as provided by section 45 of Ordinance No. 16 of 1936. The procedure for enforcing an award of the arbitrator appointed by the Ordinance is laid down in rule 29 (*k*) of the rules published at page 1755 of the *Government Gazette*, dated December 6, 1935. These rules were framed under section 37 (2) (*s*) of Ordinance No. 34 of 1921 (now repealed) but are kept alive by Ordinance No. 16 of 1936 until replaced.

Rule 29 (*k*) is as follows :—

> " A decision or award shall, on application to ány Civil Court having jurisdiction in the area in which the Society operates, be enforced in the same manner as a decree of such Court ".

The enforcement of a decree is provided for by sections 224, 225, and 347 of the Civil Procedure Code. The last mentioned section may be ignored for the purposes of this case, since it applies only to applications for execution where more than a year has elapsed since the date of the decree. Section 224 prescribes the particulars which are to be set out in an application for execution ; section 225 requires the Court to satisfy itself that the application conforms with the directions contained in section 224, and empowers the Court, unless so satisfied, to refuse to entertain the application. If satisfied, the Court is required to direct that execution shall issue.

In the present case the application was made substantially in the form prescribed in schedule II. to the Civil Procedure Code, but I may at once observe that the failure on the part of the " legal representative " of the plaintiff society to furnish therein several necessary particulars would, in my opinion, have justified the District Judge in summarily refusing to entertain the application. That, however, for the purposes of this appeal, which is from a judgment in a test case, is beside the point, as also is the omission of the said legal representative to make the application by motion as provided by section 91 of the Code. These matters are merely mentioned as indicative of the somewhat casual manner in which the assistance of the District Court was invoked.

The learned District Judge after hearing Counsel for the applicant was of opinion that before writ should issue notice of the application should first be served on the respondents. The question which he set himself to answer was enunciated by him as follows :—" Before a Court orders writ to issue in the circumstances of this case, is it lawfully requisite that notice of the application should be served on the parties against whom it is sought to issue writ ? "

Now, it is clear that no such notice is required by the Civil Procedure Code except in cases where the application is made more than one year from the date of the decree, but the learned District Judge sought to draw a distinction between an award by an arbitrator and a decree of the Court. That an award should be enforced in the same manner as a decree is not, said he, tantamount to saying that the award shall be deemed to be a decree of the Court. He then proceeded to deal with the matter in the

light of convenience. It was conceded by Counsel that if the respondents had paid the debt they would be entitled to be heard. It is more convenient, he thought, to hear them on that point before, rather than after, writ had issued. That may be true, but it seems to me a not very substantial ground upon which to base the conclusion that notice must issue on the parties to be proceeded against. In arriving at that conclusion the learned District Judge considered the cases *Mackie v. The Commissioner of Stamps et al.*[1] and *Gunawardene v. Gunasekera*[2]. Each of these cases was an appeal from the order of a Court enforcing an order by the Commissioner of Stamps, and in each case a ground of appeal was that the order has been made without giving the party sought to be affected an opportunity of being heard. Counsel for the appellant submitted that the learned District Judge misdirected himself in holding the decisions in these cases applicable to the present case. With that submission I feel bound to agree. The respondents had an opportunity of being heard before the arbitrator and by section 45 (5) his decision is final. It seems to me that their position in no way differs from that of a judgment-debtor under a decree and the latter is not entitled to be heard except as provided by section 347 which, as I have said, does not apply in this case. It is true that in the case of a decree the Court may, if necessary, satisfy itself that the application is in order by reference to the record of the action. In the case of an award it is unlikely that the Court will have any such material before it. If the Court, in order to satisfy itself, wishes to examine the parties sought to be affected, there is, in my opinion, no reason why it should not give them notice of the application. I am, however, unable to agree that there is any legal requirement that such notice should issue.

I would therefore allow the appeal.

Appeal allowed.