
(2005) 12 KL CK 0049
In the High Court Of Kerala
Case No : P.P. No. 22861 of 1999

Indian Bank

APPELLANT

Vs

Ernakulam District H.G.M.T. Co-op. Society Ltd.

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Constitution of India, 1950 — Article 14, 226, 227
Kerala Education Rules, 1959 — Rule 62
Opium Act, 1878 — Section 11
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 2, 3
Representation of the People Act, 1951 — Section 117, 81, 82, 86(1)

Citation : AIR 2006 Ker 154 : (2007) 3 BC 7 : (2006) 131 CompCas 232 : (2006) 1 ILR (Ker) 285 : (2006) 1 KLT 479

Hon'ble Judges : K.K. Denesan, J

Bench : Single Bench

Advocate : S. Easwaran, for the Appellant; C.S. Manilal and P.K. Santhamma, Govt. Pleader, for the Respondent

Judgement

K.K. Denesan, J.—Whether a suit or other proceeding filed by a bank or financial institution as defined in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short the Act) and pending adjudication before the Registrar of Co-operative Societies under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the Societies Act) would stand automatically transferred to the Recovery Tribunal constituted under the Act? If not, dismissal of the suit by the Registrar, instead of returning the same for presentation before the Tribunal, is not improper resulting in miscarriage of justice? These are the questions for consideration in this Original Petition filed in the backdrop of the following facts.

2. Petitioner is a nationalised bank and respondent No. 1 is a co-operative society registered under the Societies Act. According to the petitioner, respondent No. 1 borrowed a certain sum of money from the petitioner-bank,

respondent No. 2 executed agreements of guarantees in favour of the petitioner, agreeing among other, to repay the amount found due from the 1st respondent and an amount of Rs. 76,10,357/- became due in the account of the 1st respondent as it stood on 6-6-1996. Since respondents 1 and 2 failed to repay the amount despite notices issued, petitioner filed Arbitration Case No. 258 of 1996 on 7-6-1996 before the Joint Registrar of Co-operative Societies, Ernakulam u/s 69 of the Societies Act. Respondent No. 3 as per proceedings dated 18-7-1996 directed the 4th respondent- Asst. Registrar of Co-operative Societies (hereinafter referred to as the Arbitrator) to hear and dispose of ARC No. 258 of 1996.

3. The Debts Recovery Tribunal (for short, Tribunal) having jurisdiction to entertain and try the above suit was established with effect from 4-11-1996. Noticing the bar of jurisdiction under the Act, the Arbitrator held that it ceased to have jurisdiction to try and decide the dispute involved in ARC No. 258/96 with effect from 4-11-1996 and that the Tribunal is the competent authority to resolve the dispute. Petitioner requested the Arbitrator to transfer the case to the Tribunal or to return the plaint for presentation before the Tribunal. The Arbitrator, however, held that he has no power to transfer the case to the Tribunal under the Act or under the Societies Act. According to the Arbitrator, Section 31 of the Act provides for transfer of cases pending before the Courts only and the Arbitrator u/s 69 of the Societies Act being not a court, the only course open to it was to dismiss the case. Accordingly, A.R.C. No. 258 of 1996 was dismissed as per Ext. P4 order dated 21-7-1999 with liberty to the petitioner to file a suit before the Tribunal at Chennai. Feeling aggrieved, petitioner filed this O.P. to quash Ext. P4 order to the extent the 4th respondent has dismissed A.R.C. No. 258 of 1996 and to direct the 4th respondent to transfer the above arbitration case to the Tribunal under the Act or in the alternative to return the arbitration case to the petitioner for proper presentation before the appropriate forum, within a time to be granted by the 4th respondent

4. The arbitration case was filed on 7-6-19% u/s 69 of the Societies Act. The 1st respondent is a co-operative society registered under the Societies Act. Hence, as matters stood then, the Arbitrator under the Societies Act alone had the jurisdiction to adjudicate and resolve the dispute between the petitioner and the first respondent. Section 100 of the Societies Act says that no civil or revenue court shall have jurisdiction in respect of any matter for which provision is made in the said Act. The plaint submitted by the petitioner was taken on file by the Arbitrator as A.R.C. No. 258 of 1996 and was posted for hearing on 23-4-1997, 14-5-1997 and 21-6-1997. Thereafter, there was no posting due to the absence of the 1st defendant Petitioner and the 2nd defendant in the arbitration case were present on the dates of posting of the case. While so, it was brought to the notice of the Arbitrator that the provisions of the Act have been made applicable to the State of Kerala by constituting appropriate tribunal with effect from November, 4, 19%, the appointed day u/s 2(c) of the Act. Though the petitioner requested that the arbitration case may be transferred to the Tribunal, the

Arbitrator did not take any decision for quite some time. Since the matter was kept pending, petitioner filed O.P. No. 16186/1999 before this Court O.P. No. 16186 of 1999 was disposed of directing the Arbitrator to take appropriate decision within a time frame. It was thereafter, Ext P4 order was passed on 21-7-1999 and the same was communicated to the petitioner as per Ext P3 letter dated 27-7-1999.

5. Shri. S. Easwaran, learned Counsel for the petitioner raised, mainly, two contentions. (1) For the purpose of transfer of pending suits and other proceedings to the Tribunal having jurisdiction, Section 31 of the Act shall be so construed as to include within its purview, not only suits and proceedings pending before courts but also those pending before other authorities as on the date of establishment of the Act and (2) The Arbitrator ought not to have dismissed A.R.C. No. 258 of 19% on me ground of ouster of jurisdiction, but returned the plaint for presentation before the appropriate forum, even assuming that the case could not have been transferred to the Tribunal constituted under the Act

6. Per contra, it was submitted on behalf of the respondents that the Arbitrator ceased to have jurisdiction to decide the case in the light of Sections 17 and 18 of the Act and in the absence of any specific provision in the Act to transfer the cases pending before other authorities like the Arbitrator or to return the plaint to the plaintiff for presentation before the appropriate forum, the only course open to it was to dismiss the case.

7. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51/93) came into force on 24-6-1993. Section 3 of the Act deals with establishment of Tribunals. Section 2(c) of the Act speaks about "appointed day". As far as this case is concerned the appointed day is 4-11-1996. The subject matter of ARC No. 258 of 1996 comes within the purview of the Act. On and from 4-11-1996 the Tribunal having territorial jurisdiction over this State is the competent forum to adjudicate and decide the dispute between the petitioner on the one hand and respondents 1 and 2 on the other. Section 17 of the Act mandates that on and from the appointed day Tribunal alone will have the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. Section 18 of the Act which deals with bar of jurisdiction reads as follows:

18. Bar of jurisdiction.-- On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17.

Parliament in its wisdom incorporated Section 31 of the Act to provide for transfer of pending cases to the appropriate Tribunals. Section 31 of the Act

reads as follows:

31. Transfer of pending cases.--(1)Every suitor other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action where on it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this Sub-section shall apply to any appeal pending as aforesaid before any court.

(2) Where any suit or other proceeding stands transferred from any court to a Tribunal under Sub-section (1),--

(a) the court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made u/s 19 from the stage which was reached before such transfer or from any earlier stage as the Tribunal, may deem fit.

8. A plain reading of Sections 17 and 18 of the Act shows that ouster of jurisdiction as well as bar of jurisdiction brought into force by the Act applies to courts as well as other authorities. But provision for transfer of pending cases is made only in respect of suits and other proceedings before courts. It is for this reason respondents took up the contention that the arbitration case which was pending before the Arbitrator on the appointed day cannot be transferred to the Tribunal.

9. Is it that the Legislature did consciously omit the words "other authorities" in Section 31 of the Act or is it only an inadvertent or accidental omission? In other words is it a case of casus omissus?

10. The Act was brought into force with the object of removing the difficulties experienced by banks and other financial institutions in recovering the loans as also the enforcement of securities charged with them. Legislature took cognizance of the fact that the procedure which existed prior to the commencement of the Act had blocked a significant portion of the funds of the aforesaid institutions in unproductive assets, the value of which deteriorates with the passage of time. Parliament felt the need to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay since the blocking of huge amount of public money in litigation prevented proper utilisation and recycling of the funds for the development of the country. Prior to the establishment of the Act, banks and financial institutions used to seek reliefs from the civil courts or other authorities set up under special enactment. The other authorities constituted under various enactments were invested with the power to adjudicate the issues and to decree the suit. Most of these enactments contained express provisions ousting the jurisdiction of the

civil courts to entertain such suits. As per Section 17 of the Act, not only the civil courts but also the other authorities would cease to be the forum having jurisdiction to try and dispose of matters coming within the jurisdiction of the Tribunal. Bar of jurisdiction applies to specified categories of suits and proceedings, pending not only before the civil courts but also other authorities on the appointed day. These aspects strongly raise the question whether the Legislature Which treated suits and other proceedings before the courts and other authorities alike for the purpose of ouster of jurisdiction and bar of jurisdiction, did intend to treat dissimilarly suits and proceedings before the other authorities for the purpose of transfer of cases? There appears hardly any valid reason or rationale for such dissimilar treatment by excluding other authorities from the purview of automatic transfer of cases. No purpose also could be seen for such dissimilar treatment. Therefore, it is possible to infer that it could be a case of legislative omission; an omission which is inadvertant or accidental and unintentional. Provisions in the statute treating equals as unequals and violating Article 14 of the Constitution of India are liable to be struck down as ultravires. It is well settled that as far as possible, Courts adopt a construction which would bring the legislation intravires the Constitution and avoid, as far as legally permissible, its striking down as unconstitutional. It is equally well settled that when provisions of the enactment do not embrace the true intention of the legislature, it produces results which are contrary to the object and purpose of the enactment. It is contended on behalf of the petitioner that Section 31 of the Act presents a case of this nature. Is it, however, proper for this Court, to supply words to the statutory provision which is the function of the Legislature?

11. A catena of judicial pronouncements can be cited to contend for the position that courts shall not readily infer casus omissus or supply the omission, for, courts are expected to find out the intention of the legislature by interpreting the language of the statutes. To counter the above school of thought, learned Counsel for the petitioner placed reliance on a long line of judicial pronouncements, foreign as well as Indian, to canvass for the proposition that courts must adopt a realistic approach in construing or interpreting statutory provisions and need not hesitate to supply words, if need be, so as to prevent patent injustice resulting from inadvertant and unintentional omissions in the provisions of the statute. The following passage extracted from Maxwell on the Interpretation of Statutes, Twelfth Edition throws light in this direction:

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning.

Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule: "the canons of construction are not so rigid as to prevent a realistic solution.

The illustrative cases that have been briefly dealt with in page 229 of the same edition lend support to the school of thought that courts will have occasionally and for justifiable reasons, to fill omissions, though rarely, in the statutory provisions attributable to obvious oversights. In *Tirath Singh Vs. Bachittar Singh and Others*, the Supreme Court quoting the passage from Maxwell (*supra*) expressed the opinion that it is a well established rule of interpretation. In *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*, interpreting Section 11 of the Opium Act, 1878 (as applicable to M.P.), Supreme Court referred to *Tirath Singh's* case (*supra*) and stated as follows:

According to Mr. Shroff, the truck would have to be confiscated. It is well recognised that if a statute leads to absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.

Lord Denning in *Seqford Court Estates, Ltd. v. Asher* 1949 (2) All E.R. 155 expressed the view that the principle laid down in *Winchester Court Ltd. v. Miller* (1944) 2 All E.R. 106 that

whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature.

Lord Denning then held:

...put into homely metaphor it is this: A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the

texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

12. In *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, a Bench of 3 Judges of the Supreme Court speaking through Krishna Iyer, J. referred to the principle of statutory interpretation given by Denning, L.J. candidly said that the rule of interpretation adopted by the Supreme Court was by taking cue from the observations made in *Seaford Court Estates Limited* (supra).

13. In this context it is only proper to refer to another three member bench decision of the Apex Court decided in the same year, where Untwalia, J. speaking for the Bench found favour with the rule of construction that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. (See *Dhoom Singh Vs. Prakash Chandra Sethi and Others*, . The above view was taken by the Supreme Court while construing the provisions of Sections 81, 82 and 117 of the Representation of the People Act, 1951. Supreme Court repelled the right of an elector to intervene and substantiate allegations of fraud and collusion between the election petitioner and the returned candidate even in a case where as a result of the fraud and collusion between the election petitioner and the returned candidate the High Court was fraudulently misled to act u/s 86(1) of the Representation of the People Act. In the opinion of the Supreme Court if there be any necessity of avoiding any such situation it is for the legislature to intervene and make clear and express provision of law for the purpose.

14. Omissions in a statute, cannot, as a general rule be supplied by construction, is a well accepted rule of interpretation. It is true that this general principle is not without exception. Since the primary purpose of construction is to ascertain the intention of the Legislature, such intention should be given effect, even if it necessitates the supplying of omissions, provided, of course, that this effectuates the legislative intention. There are decisions indicating a trend in this direction as well. Since the primary source of legislative intent is the language of the statute, judicial thinking leans more in favour of the former school of thought. The following passage quoted below from Crawford's *Interpretation of Laws*, (Page 271, 1989 Reprint) would give a clear idea about the view expressed by Courts in regard to *casus omissus*:

Obviously the reason back of the rule of *casus omissus* is found in the principle that if the court attempts to supply that which the legislature has omitted, there is considerable danger that it may invade the legislative field. It is not easy to determine whether the omission was intentional or not. And even where it was inadvertent, an attempt to supply the omission, by including the omitted case, generally would operate to add to the statute a meaning not intended by the legislature, for, how can it be said that the lawmakers intended to include something omitted?

It is, of course, pertinent to note that the above passage concludes as follows:

It would seem that the only time the omitted case might be included within the statute's operation, would be when the legislature intended to include it, but actually failed to use language which would, on its face, cover the omitted case. The inclusion would then be justified, if from the various intrinsic and extrinsic aids, the intent of the legislature to incorporate the omitted case, could be ascertained with a reasonable degree of certainty.

15. Supreme Court had occasion to consider the relevance of the above rule of construction in *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, wherein it is held, vide paragraph 10 of the judgment, that two principles of construction -- one relating to *casus omissus* and the other in regard to reading the statute as a whole appear to be well settled. Quoting from *Maxwell on Interpretation of Statutes* (12 Edn.) at page 33, Supreme Court highlighted the importance of the two rules of interpretation. (1) Omissions not to be inferred and (2) a statute is to be read as a whole. In the latter half of the same paragraph the following is stated:

In other words, under the first principle a *casus omissus* cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts L.J. in *Artemiou v. Procopiou* (1966) 1QB 878, is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke v. I.R.C.* 1963 AC 557 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges.

In *B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others*, the Apex Court held that legislations to remedy wrongs ought not to exclude from their purview persons, a few of the wronged, unless the situation and the circumstances make the redressal of the wrong, in their case, either impossible or so detrimental to the public interest that the mischief of the remedy outweighs the mischief sought to be remedied. One of the arguments raised before the Supreme Court in the above case was that it was not open to the court to give retrospectivity to a legislation to which the legislature plainly and expressly refused to give retrospectivity. While dealing with that contention, the Supreme Court stated, *inter alia*, as follows:

We must further remember, quite apart from any question of retrospectivity, that, unlike in the United Kingdom here in India we have a written Constitution which confers justiciable fundamental rights and so the very refusal to make an Act retrospective or the non-application of the Act with reference to a date or to an event that took place before the enactment may, by itself, create an impermissible classification justifying the striking down of the non-retroactivity or non-application clause, as offending the fundamental right to equality before the law and the equal protection of the laws.

In *State of Karnataka and Another Vs. Hansa Corporation*, the Apex Court quoted with approval the statement of law enunciated in *Seaford Court Estates Ltd.* (supra) and held that

where one has to look at a section not very well drafted but the object behind the legislation and the purpose of enacting the same is clearly discernible, the court cannot hold its hand and blame the draftsman and chart an easy course of striking down the statute. In such a situation the court should be guided by a creative approach to ascertain what was intended to be done by the legislature in enacting the legislation and so construe it as to give force and life to the intention of the legislature.

16. It cannot, however, be forgotten that the golden rule of interpretation of statute is that when the language is explicit, its consequences are for the legislature and not for the Court to consider. If it appears to the court that words which ought to have been there in the statutes have been omitted by the legislature, it must be supposed that the omission was intentional. Even if the omission is obvious, *casus omissus* can in no cases be supplied by the process of interpretation. The following passage from *Craies on Statute Law*, VII Edition at Page 71 reflects the judicial thinking that held the field in England in the 18th and 19th centuries:

In *Jones v. Smart* (1785) 1 T.R. 44 the question was whether a doctor of physic in a Scottish university was qualified to kill game under 22 & 23 Car. 2, Clause 25, which enacted "that every person... other than the son of an esquire, or other person of higher degree... is declared to be a person by the law of this realm not allowed to have any guns... for taking game." Amongst other arguments for proving that a Scottish doctor of physic was qualified, it was contended that the legislature could not have intended to exclude such a person. "Be "that as it may," said Buller J. in his judgment, "we are bound to take the Act of Parliament as they have made it; a *casus omissus* can in no case be supplied by a court of law, for that would be to make laws." As a general rule, as Blackburn J. pointed out in *Rule v. Cleworth* (1864) 4 B & S 927 if it appears that the class or thing which it is sought to bring within the Act (under consideration) was known to the legislature at the time when the Act was passed, and that class is omitted, "it must be supposed to have been omitted intentionally." It makes no difference if it appears that the omission on the part of the legislature was a mere oversight, and that without doubt the Act would have been drawn otherwise had the

attention of the legislature been directed to the oversight at the time the Act was under discussion.

Privy Council, in AIR 1938 281 (Privy Council) , while construing the provisions of Section 114 (1) and (3) of the Bengal Tenancy Act, 1885, held as follows:

All these provisions seem quite inconsistent with a shifting liability passing from the certificate debtor to any new landlord to whom the estate may pass. The fact seems to be that the various Acts have provided for all contingencies as to transmission and devolution of the estate, but have not provided for the special case in which the patni estate is not transmitted or devolved, but annulled and determined. It may be that there is here a casus omissus, but if so, that omission can only be supplied by statute or statutory action. The Court cannot put into the Act words which are not expressed, and which cannot reasonably be implied on any recognized principles of construction. That would be a work of legislation, not of construction, and outside the province of the Court.

In *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, the Apex Court held:

It was unfortunate that when the Legislature came to amend the old Section 71 of the Act it forgot to amend Section 90 in conformity with the amendment of Section 71. But this lacuna cannot be supplied by any such liberal construction as the High Court sought to put upon the expression "orders of any authority whose sanction is necessary." No doubt it is the duty of the Court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act.

This proposition has been found favour in *Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others*, , *Indian Administrative Service (S.C.S.) Association, U.P. and Others Vs. Union of India (UOI) and Others*, , *Mohan Kumar Singhania v. Union of India* 1992 Supp. (1) SCC 59 and *The State of Kerala and Others Vs. Dr. S.G. Sarvothama Prabhu*, . In fact, the Apex Court has held in the above judgments that if the words are unambiguous, clear and explicit, there need be no recourse to any rules of interpretation. In this context reference can be made to judgment in *Surendran Vs. Mavelikara Primary Co-op. Agrl. and R.D. Bank Ltd.*, holding the view that when the language of the statute is plain and unambiguous, the court must give effect to it, whatever may be the consequence.

17. In *State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another*, the Apex Court quoted with approval the observation in *Crawford v. Spooner* 1846(6) M P C 1 that courts cannot aid the Legislatures' defective phrasing of an Act, we cannot add or amend, and by construction make up deficiencies which are left there. In *State of Kerala v. Neelakandan Nair* 2005 (3) KLT 717 : ILR 2005 Ker 611 the Apex Court while examining the scope of Rule 62 of Chapter XIV A of the Kerala Education Rules and Rule 60 (c) of Part I, Kerala Service Rules, made the

following observations with particular reference to casus omissus:-

It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt". "But", on the other hand, "it is no reason* when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See *Fenton v. Hampton* 1858 11 M P.C. 347. A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislatores, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute--Casus omissus et oblivioni datus dispositioni communis juris relinquitur, "a casus omissus," observed Buller, J. in *Jones v. Smart* ITR 52, "can in no case be supplied by a Court of law, for that would be to make laws.

The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See *Grey v. Pearson* 1857 (6) H.L. Cas. 61). The latter part of this "golden rule" must, however, be applied with much caution, "if, remarked Jervis, C.J., "the precise words used are plain and unambiguous in our Judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" See *Abley v. Dale* 11 C.B. 378."

In the next paragraph of the above judgment the Apex Court referred to the maxim "Ad ea quae frequentius accidunt jura adaptantur" (The laws are adapted to those cases which more frequently occur).

18. Keeping in mind the above principles of law, let us read Section 31 of the Act once again. It is explicitly clear that Sub-section (1) of Section 31 speaks only about suit or other proceeding pending before any court, the proviso to the above Sub-section speaks about appeal pending before any court, Sub-section (2) speaks only about suit or other proceeding transferred from any court and Clause (a) of Sub-section (2) also speaks only about the court. Absence of the words "other authority" in more than one place in Section 31 is so conspicuous that supplying the said words in Sub-section (1) of Section 31, the proviso to Sub-section (1), Sub-section (2) of Section 31 as also Clause (a) of the said Sub-

section would in effect amount to substantial alterations and rewriting the section. It will not fall within the expression "ironing out the creases." Such rewriting is the function of the legislature. Section 31 when read in isolation does not raise any problem; neither ambiguity nor irrationality. Problems arise only when Section 31 is read along with Section 17 and 18 in the background of the statement of objects and reasons which led to the passing of that enactment. In this view of the matter I am unable to accept the contention of Shri. Easwaran that Section 31 of the Act shall be read by supplying the words "other authority", after the word "court" in Sub-section (1) and the proviso to Section 31 of the Act.

19. The next question for consideration is whether the dismissal of the suit (arbitration case) instead of returning the plaint for presentation before the Tribunal has led to miscarriage of justice and if so, whether appropriate reliefs can be granted to the petitioner in the facts and circumstances of this case. Learned Counsel for the petitioner drew my attention to Order VII, Rule 10 of the Code of Civil Procedure, decisions of the Supreme Court in *Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar*, and *M/s. Air Tech India Vs. Asstt. Commr., Comml. Taxes and Others*, and contended that the legislative policy underlying Order VII, Rule 10 C.P.C. can be made applicable to suits filed before the Registrar dealing with cases u/s 69 of the Societies Act. Respondents resisted the above line of argument pointing out the absence of express provisions in the Societies Act or in the Rules enabling the Arbitrator to return the plaint for presentation before the proper forum. It was also pointed out that the above decisions of the Apex Court have not laid down any principle that the legislative policy behind Order VII Rule 10 can be extended to any other adjudicating forum other than the courts coming under C.P.C. Counsel for the petitioner, in reply, asked a counter question to be answered by the respondents and submitted that there is no express provision to dismiss the case either, when jurisdiction is taken away by operation of law to proceed with a pending matter that the order was passed without the authority. He contended that there is no express provision to dismiss the case in the event of ouster of jurisdiction.

20. On an anxious consideration of the rival contentions of the counsel on either side, I feel, in the facts and circumstances of this case, that return of the plaint alone would meet the ends of justice. No doubt, Order VII, Rule 10 C.P.C. is not, as such, attracted to a like this. Petitioner invoked Section 69 of the Societies Act and filed the suit before the proper forum as matters stood on the date of filing of the suit. The Arbitrator upon taking cognizance of the matter issued summons to the opposite parties and called upon them to file written statement. While so, the Act came into force and the Tribunal was constituted. The Arbitrator has been divested of his power to proceed with the matter by the force of Section 18 of the Act that intervened. The impugned order was passed taking note of the fact that the Tribunal under the Act has been constituted and the petitioner has to proceed with his case further, before the said Tribunal. As rightly contended by counsel for the petitioner in a situation like this, there is neither provision for dismissal of the suit nor for return of the plaint. If the plaint is returned for

presentation before the forum having jurisdiction, further proceedings before that forum could be initiated from the stage at which the matter stood before the forum which lost the jurisdiction. On the other hand, if the suit is dismissed in the light of Section 18 of the Act, the plaintiff/petitioner will have to start everything fresh before the forum vested with the jurisdiction. Such a course of action would create new hurdles such as limitation to approach the Tribunal, payment of court fees and other fees prescribed for entertaining the suit by the Tribunal, etc., for the plaintiff. Plaintiff is made to face such problems for no fault of his. Such problems are the direct result of the provisions of the Act. Hence even in the absence of a statutory provision in the nature of Order VII Rule 10, C.P.C. the principle of law coupled with justice and equity embodied in the aforesaid statutory provision has to be stretched to other areas of adjudication and made applicable to situations where the adjudicating authority finds that it has no jurisdiction to entertain a suit or to proceed with one which has already been entertained, but cannot be disposed of on merits for want of jurisdiction as a result of ouster of jurisdiction or other intervening factors like the operation of law.

21. In the result, though I am inclined to uphold the decision of the 4th respondent rejecting the request of the petitioner to transfer the arbitration case to the Tribunal, I hold that the dismissal of the arbitration case warrants interference under Article 226 of the Constitution of India to undo the injustice, I hold that the arbitration case ought to have been returned to the petitioner/plaintiff for proper presentation before the appropriate Tribunal. Ext. P4 order of the 4th respondent to the extent it dismissed the arbitration case is set aside. There shall be a direction to the 4th respondent that the plaint shall be returned to the petitioner for presentation before the proper forum within three weeks from the date of return. Upon presentation of the plaint as aforesaid, the Tribunal having jurisdiction shall proceed with the case in accordance with law. Original petition is disposed of as above. There will be no order as to costs.