(1978) 10 DEL CK 0016

Delhi High Court

Case No: Suit Appeal No. 391 of 1967

The Punjab National Bank Ltd.		APPELLANT
	Vs	
Panchsheela Industrial Co-operative Society Ltd. and Others		RESPONDENT

Date of Decision: Oct. 10, 1978

Citation: (1979) ILR Delhi 300

Hon'ble Judges: T.V.R. Tatachari, J; T.P.S Chawla, J

Bench: Division Bench

Advocate: S.K. Khanna, S.P. Aggarwal, Harbans Singh, Ved Vyas, D.S. Dang, R. Dayal, A.B. Dayal, D.K. Kapur and Y.K. Kapoor, for the Appellant;

Judgement

T.P.S. Chawla, J.

(1) A single judge sitting on the original side has referred this suit for deicision by a larger bench as he thought it involved important and complicated questions of law. The order of reference was presumably made under rule 2, chapter 2, Original Side Rules, as that rule stands after the amendment in, 1973. Since the entire suit has been referred, and not merely some questions of law, it is necessary to record a finding on each issue. For comprehending the issues, it is enough if I briefly indicate what is in the pleadings.

(2) The suit was instituted on 6th June 1967. A decree was claimed for Rs. 17,16,758.96 comprising the principal sum of a loan and interest accrued thereon. The plaintiff was the Punjab National Bank Limited, a company registered under the Indian Companies Act. By the Banking Companies (Acquisition and Transfer of Undertakings) Act 1969, this bank, along with many others, was nationalised. The undertaking of every such existing bank was transferred to and vested in a corresponding new bank. The new bank corresponding to the plaintiff was named simply ''Punjab National Bank'', By an order 303 dated 23rd September 1969, the

Punjab National Bank was given leave to continue the suit, and appropriate amendments were made in the plaint. Nothing turns on this. and I have mentioned it merely for the record-

(3) Panchshila Industrial Co-operative Society Limited is the first defendant. It was registered as a society under the Punjab Co-operative Societies Act on 26th December, 1955. The registered office of the society was at Faridabad and its head office at Asaf Ali Road, New Delhi. The society was fanned with the object of setting up a processing factory at Faridabad for bleaching dyeing and printing of textiles and yarn.

(4) According to the allegations in the plaint, the society sought a loan of Rs. 12 lakhs from the bank in or about April 1963. This money was needed for constructing the factory at Faridabad and purchasing the machinery. The State of Punjab agreed to guarantee the repayment of the loan. After some negotiations, the bank agreed to advance the money. On 29th May, 1963 an ''agreement for overdraft'' was signed between the bank and the society. One of its clauses stipulated ''That the entire amount of loan of Rs. 12 lacs with interest accrued and other charges livable will be paid by the borrowers in 3 equal annual Installments, the first Installment to begin from the date the factory starts full production or one year after the date of advance, whichever is earlier.'' On 30th May 1963, the State of Punjab executed a deed of guarantee undertaking to pay the amount due to the bank in the event of default by the Society-

(5) Pursuant to these agreements, an overdraft of Rs. 12 lakhs was allowed to the society on 4th June 1963 by the branch of the bank at Ajmeri Gate, New Delhi. Within a short time, the whole amount was withdrawn by the Society-

(6) The first Installment fell due for repayment on 4th June 1964 as the factory had not gone into production, earlier. The society and the State of Punjab jointly requested the bank to allow this'' repayment to be deferred by a year till 4th June 1965. But, even in 1965 no amount was repaid. Nor in 1966, or, even 1967. Consequently, the present suit was filed on 6th june 1967 to recover the principal amount with interest and Other charges.

(7) Menawhile, in 1966, the Punjab Reorganisation Act was passed. By that Act, out of the existing State of Punjab the new State of Haryana was formed and certain territories were transferred to the Union Territory of Himachal Pradesh. Chandigarh was made in,to a new Union Territory. The assets and liabilities of the existing State of Punjab were apportioned between the successor states. Because of these developments, the bank joined the State of Punjab, the State of Haryana and the Union of India as defendants in the suit, seeking to hold them jointly and severally liable as guarantors for the amount claimed

(8) All the defendants denied liability, and disputed the amount claimed by the bank. The society raised the objection that the suit was not maintainable as notice had not

been served on the Registrar as required by section 79 of the Punjab Co-operative Societies Act 1961. It also contended that as an Administrator had been appointed in 1962, u/s 27 of that Act, to manage the affairs of the society, he was a necessary party to the suit. Each of the other defendants denied that it was liable on the guarantee given by the erstwhile State of Punjab.

(9) On the matters in controversy the following issues were framed : ''(1) Whether the plaint has been properly signed, verified and filed on behalf of the plaintiff ? (2) Is the suit had for non-joinder of necessary parties ? (3) Whether the plaint discloses a cause of action against the Union of India ? (4) Whether the suit for recovery of the amount claimed is maintainable against the Union of India and is this defendant liable to make payment to the plaintiff ? (5) Whether the provisions of section 79 of the Punjab Co-operative Societies Act are attracted in the present suit ? If so, to what effect ? (6) If the above issue is found against the plaintiff, whether the suit is maintainable against defendant I for non-compliance with the provisions of section 79 of the Punjab Cooperative Societies Act ? (7) What amount is due to the plaintiff ? (8) As between defendants 2 and 3, who is liable for payment of the amount in suit ? 305 With regard to issues Nos. 1, 2 and 7 there has been very little contest. It is convenient to dispose of them first. Issue No. I

(10) When the suit was tiled the plaintiff was a company registered under the Indian Companies Act. By Article 74 of the Articles of Association of the company the Board of Directors were authorised to delegate any of their powers to committees consisting of members of the Board. It was expressly declared by Article 62(xiv) that the Board of Directors may authorise or empower the managers or other officers or employees at the head office or any branch for the time being of the company to exercise and perform all or any of the powers conferred upon the Directors. On 20th February 1959, the Board of Directors passed a resolution Constituting a special committee comprising of two Directors. In the same resolution, various powers vesting in the Board were delegated to this committee, including the power under Article 62(xiv).

(11) On 22nd May 1959, the special committee resolved that a power of attorney, of which a draft was annexed, be granted to Mr. Roshan Lal Puri, who was working in the Law Department at the head office of the company in New Delhi. The power of attorney was executed on 7th December 1960 and registered on 23rd January 1961. It made Mr. Puri the ''true and lawful'' attorney of the company, and he was specifically authorised by clauses 2 and 3(i) and (ii), inter aha, to institute suits, sign and verify plaints and engage counsel on its behalf. On 26th April 1967, the Board of Directors itself resolved that a suit be filed against the society and the other defendants ''for recovery of bank dues''. Again, Mr. Puri, who was now the Manager of the Law Department, was ''authorised to file the suit, sign and verify the plaint, engage counsel and do all other acts necessary in this behalf.

(12) Mr. Puri has signed and verified the plaint and also the power of attorney given to counsel for the bank. On these documents he has described himself as ''principal officer and general attorney''. It is manifest from the documents to which I have just referred that this description, was true, and he was authorised to institute the suit, sign and verify the plaint and engage counsel on behalf of the bank. As principal officer, he was, in addition, competent to sign and verify the plaint by virtue of order 29 rule I of the Code of Civil Procedure. 306 No argument was advanced by any of the defendants on this issue, and I decide it in favor of the bank. Issue No. 2

(13) Sometime in the first half of 1962, the Registrar of Co-operative Societies, Punjab, received an audit report in respect of the society which revealed gross mismanagement of its affairs and persistant disregard of its bye-laws'' by the then managing committee. So, the Registrar issued a notice to the committee, u/s 27 of the Punjab Co-operative Societies Act, to show cause why it should not be removed and an Administrator appointed instead to manage the affairs of the society- The response of the managing committee to this notice was to pass a resolution itself on 6th June 1962 requesting the Registrar to appoint an Administrator. Accordingly, the Registrar appointed an Administrator by an order made on 3rd September 1962, which was served on the society on 8th September 1962. The tenure of the Administrator was extended from time to time.

(14) At the time when the loan was taken from the bank, the Administrator was managing the affairs of the society. He signed for the society on all the documents partaining to the loan. By a resolution passed on 19th November 1962, the general body of the society had specifically authorised the Administrator to raise further adequate finances'' and to sign and execute documents on its behalf for this purpose. Section 23 of the Punjab Co-operative Societies Act makes the general body of members the ''final authority'' in a co-operative society. Article 20 of the bye-laws of the society does the same. Thus, being directly authorised by the general body, the Administrator was fully competent to raise a loan on behalf of the society. But, even otherwise, section 27(3) of the Punjab Co-operative Societies Act gave the Administrator ''power to perform all or any of the functions of the committee''. The committee had power to ''contract loans'' under bye-law 28(11).

(15) It was contended on behalf of the society that the Administrator should have been joined as a party to the suit. No authority was cited in support of this submission and it has no substance. The Administrator acted for and on behalf of the society in taking the loan from the bank, and not on his own behalf. The money advanced by the bank went into the coffers of the society, and not into the pocket of the Administrator. The Administator only functioned as an agent of the society. The parties to the contract were the society and the bank. In no way can the Administrator be held personally liable. 307 He is neither a necessary nor proper party to the suit. I decide this issue accordingly. Issue No. 7.

(16) It will be recalled that the ''agreement for overdraft'' was signed between the bank and the society on 29th May 1963, and the State of Punjab executed the deed of guarantee on 30th May 1963. By an application dated 4th June 1963, the society requested the bank lo open an overdraft account in its name. On the same day, 4th June 1963, the society wrote a letter to the bank requesting that the loan of Rs. 12 lakhs be debited to this overdraft account and then credited to the already existing current account of the society. Acting on these instructions, the bank opened an overdraft account which begins with a debit entry of Rs. 12 lakhs on 4th June 1963. A transfer voucher was prepared by the bank on the same day, and simultaneously the whole amount of Rs. 12 lakhs was credited to the current account of the society. The copy of the current account shows that the society had withdrawn the entire amount of the loan by the end of March 1964, and only a nominal credit balance subsisted thereafter.

(17) The amounts due to the bank from the society on account of principal and interest, from time to time, can be seen from the copy of the overdraft account. Of course, the principal remained Rs. 12 lakhs. Regarding interest, clause 6 of the overdraft agreement stated: ''That interest at 31/2% per annum over the Reserve Bank of India rate with a minimum of 8% per annum shall be calculated and charged with quarterly rests a,nd the interest so charged, if not paid, will form part of the principal and will carry interest at the abovementioned rate. Uptil 17th February 1966, interest has been charged at 8% per annum in the manner provided by this clause. After 17th February 1966 interest has been charged at 10 per cent per annum in the same manner. Clause 7 of the overdraft agreement gave the bank ''the right to enhance the stipulated rate of interest after notice. .. . ''. Although the notice sent to the society intimating that interest at the enhanced rate of 10% would be charged from 17th February 1966 is dated 16th March 1966, no objection concerning it was ever raised, either before or in the course of these proceedings. In accordance with these calculations, the overdraft account shows that a sum of Rs. 17,16,758.96 308 was due to the bank from the society on 30th May 1967. This is the amount claimed in the plaint.

(18) There can be no doubt that this amount is due to the bank from the society. Three confirmation slips have been placed on record in which the society has acknowledged the amounts due from it on different dates. The latest of these is dated 24th February 1965, and it confirms that a sum of Rs. 13,61,973.08 was due to the bank on 31st December 1964. As interest continued to accrue over the next two and a half years, the amount due increased to that claimed in the plaint when the suit was filed.

(19) Prior to the suit, none of the defendants ever disputed the amount claimed by the bank. The society must have received statements of account from the bank at regular intervals. It never raised any objection to any entry contained in those statements. On 27th May 1964, i.e. just a little before the first Installment became

due for repayment, the society wrote a letter to the bank asking for extension of time. The State of Punjab made a request to the bank to the like effect in a letter dated 2nd June 1964. Neither of them questioned the amount due to the bank. Notices dated 1st April 1967 were sent by counsel for the bank to all the defendants demanding the amount, inclusive of interest, due at that time. None of the defendants even cared to answer that notice or repudiate any part of its contents, though the suit was not filed till two months later. Even at the final hearing of this suit, none of the defendants had anything to say as to the amount claimed by the bank. That is a tacit admission that the amount claimed by the bank is correct. Therefore, on this issue, I find that a sum of Rs. 17,16,758.96 is due to the bank from the society. Issue Nos. 3, 4 & 8

(20) These three issues actually pose one and the same question: which of the successor states is liable on the guarantee that was given to the bank by the State of Punjab on 30th May 1963 ?

(21) It will be recalled that the Punjab Reorganisation Act 1966 created the new State of Haryana by separating some territories of the then existing State of Punjab. Also, some territories of the existing State of Punjab were transferred to the Union Territory of Himachal Pradesh, and Chandigarh was made into a Union Territory. The remnant of the territories of the existing state continued to be the State of Punjab : see section 2(1) and 6. In recognition of these changes, section 2(m) said that, "successor State", in relation to 309 the existing State of Punjab, means the State of Punjab or Haryana, and includes also the Union in relation to the Union Territory of Chandigarh and the transferred territory''.

(22) Part Vi of the Act contains provisions for the ''Apportionment of assets and liabilities'' of the existing State of Punjab between the ''successor States''. Section 61, which falls in that Part, deals specifically with the apportionment of ''Liability as guarantor'' of the existing State. It applies directly in the present case, and reads as follows: ''Where, immediately before the appointed day, the existing State of Punjab is liable as guarantor in respect of any liability of a registered co-operative society or other person, that liability of the existing Sate of Punjab shall (a) if the area of the operations of such society or person is limited to the territories which on and from that day are the territories of one of the successor States, be a liability of that successor State; and (b) in any other case, be a liability of the State of Punjab : Provided that in any such case as is referred to in clause (b) the initial allocation of liabilities under this section shall be subject to such ''financial adjustment as may be agreed upon between all the successor States, or in default of such agreement, as the Central Government may by order direct.''

(23) For implementing this section, the crucial question is, what is ''the area of the operations'' of a society or person ? If that area is limited'', which in the context of clause (a) clearly means ''confined'', to the territories of one of the successor States, then the liability as guarantor fastens on that State. But, if the area is not so

confined, and extends over the territories of more than one successor State, the liability, by clause (b). devolves on the State of Punjab. The proviso deals with subsequent ''financial adjustment'' and is of no relevance.

(24) In bye-law 2 of the defendant society, it is stated that ''the area of operation of the society shall extend to whole State of Punjab''. This bye-law is necessitated by rule 8 of the Punjab Co-operative 310 Societies Rules, 1963 which have been made by the Government of Punjab in exercise of the powers conferred by section 85 of the Punjab Co-operative Society Act, 1961. According to that rule, ''A co-operative society shall make bye-laws in respect of the matters specified therein, one of which, at item (b), is ''area of operation''. Similar rules are in force in nearly all the other states.

(25) The Secretary of the defendant society said in his cross-examination, that the general body of the society passed a resolution on 30th September, 1966 ''adopting an amendment to its bye-laws clarifying that its area of operation would be the State of Haryana instead of the whole of the erstwhile State of Punjab''. A copy of the resolution has not been produced. Nor has it been shown that the resolution was registered by the Registrar. Section 10(1) of the Punjab Co-operative Societies Act says that ''No amendment of any bye-laws of a co-operative society shall be valid unless such amendment has been registered under this Act''. Thus, even if a resolution of the ''kind mentioned by the Secretary was passed, it would be of no effect unless registered. On this state of the evidence, the resolution mentioned by the Secretary must be ignored. Counsel for the defendants did not contend otherwise, and argued the case only on the basis of the bye-laws as they stand without the alleged amendment.

(26) So, the position is, that according to its bye-law 2, the area of operation of the society is the ''whole State of Punjab''. The society was registered on 26th December, 1955, and naturally the words ''State of Punjab'' must be understood to mean what they meant then. That was before the Re-organisation, and the State of Punjab at that time included all the territories which came to be excluded by the Punjab Re-organisation Act, 1966. Hence, the area of operations of the society, as defined in its bye-laws, is not limited'' to any one of the successor states. It follows that the present case does not come within clause (a) of section 61, and the State of Punjab is liable as guarantor under the residuary clause (b).

(27) This line of reasoning was supported by all the parties, except understandably, the State of Punjab. Counsel for that State contended that this was not the right way to construe ''the area of the operations''. He emphasised that those words had to be interpreted not only in relation to a ''co-operative society'' but also any ''other person'', and in regard to the latter there would be no bye-laws defining ''the area of the operations''. Therefore, he said, it was necessary to give to those words a meaning which was equally apt in its application to any ''other person''. He submitted that the normal and natural meaning of ''the area of the operations'' was

the place where the industrial or business activity was actually, and not merely theoretically, carried on. This meaning, he argued, provided a simple test capable of uniform application whether it be a ''co-operative society'' or ''other person''. Accordingly, he maintained, that since here the society had its factory at Faridabad, and ''nowhere else in the successor states, the State of Haryana was liable as guarantor.

(28) Though I do not deny that there is force in this argument, I have come to the conclusion that it cannot be accepted. When a co-operative society is registered, it becomes a ''body corporate'' by virtue of section 30 of the Punjab Co-operative Societies Act. Like a company, it is, in law, a ''person''. The word ''person'', as defined in section 3(42) of the General Clauses Act 1897, includes ''any company or association or body of individuals, whether incorporated or not''. A co-operative society would certainly be covered by the broad sweep of that definition.

(29) In section 61 of the Punjab Re-organisation Act, the word ''person'' has patently been used in its widest sense. It is intended to include both natural and legal persons. It would include a company, for there is no apparent reason why it should not. It would also have included a co-operative society because it is a ''body corporate''. Yet, of all the various kinds of persons known to and recognised by the law, only a co-operative society is singled out for specific mention in section 61 of the Punjab Re-organisation Act. That could not be without reason.

(30) Counsel for the State of Punjab suggested that shice a co-operative society is not expressly mentioned in the definition of ''person'' in the General Clauses Act, that is why it became necessary to expressly mention it in section 61 of the Punjab Re-organisation Act. I do not think this is a valid reason, because the definition in the General Clauses Act is wide enough to cover a co-operative society.

(31) The real reason, I think, is to be found in the history of the relevant legislation. In 1942, an Act known as the Multi-Unit Co-operative Societies Act was passed. The need for that Act is ''explained in the first paragraph of the Statement of Objects and Reasons. It reads: ''Multi-Unit Co-operative Societies, that is to say, co-operative societies operating over more than one province are corporations within the meaning of Entry 33 in List I of 312 the Seventh Schedule of the Government of India Act, 1935, and the legislative and executive jurisdiction in respect of their incorporation, regulation and winding up is exclusively central . Any provisions of the Co-operative Societies Act, 1912, or of the Provincial Co-operative Societies Acts, which might purport to vest executive jurisdiction in respect of such multi-unit societies in provinces can have no valid basis. It is, Therefore, necessary to legislate for the incorporation, ''regulation and winding up of co-operative societies operating over more than one province.''

(32) In consonance with this statement, the Preamble declares that it is an Act ''to provide for the incorporation, regulation and winding up of co-operative societies

with objects not confined to one province''. And, accordingly, section 1(3) says: It applies to all co-operative societies with objects not confined to one province (now, State).....''. I am not concerned with the other provisions of the Act, but, in brief, they enact that, if a multi-unit society is ''actually registered'' in one state, it is ''deemed'' to be duly registered ''in any other State to which its objects extend''. In this scheme of things, it is obviously necessary to know to which state the objects of a society are confined. That accounts for the requirement in the law of each state that the ''area of the operation'' of a society shall be stated in its bye-laws.

(33) Section 89 of the State Re-organisation Act, 1956 is the prototype of a section dealing with the devolution of liability of the guarantor of a co-operative society on a re-organisation of states. This section referred only to a ''co-operative society'' and did not mention any ''other person'', in sub-clause (b), it said, that the liability of the existing state shall, ''if there be two or more successor States and the area of the society''s operations is limited to the territories which, as from that day. are the territories of one of them, be a liability of the successor State''. With the background of the Multi-Unit Co-operative Societies Act, 1942, and the requirement in the states that the bye-laws must specify the area of operations, there could be no doubt that the ''area of the society''s operations'' for the purpose of section 89 (b) was that stated in the bye-laws. As the word ''person'' did not occur in that section, there was nothing to complicate the issue. That word was first introduced in section 62 of the Bombay Re-organisation Act. 1960 whilst apportioning the liability of a guarantor amongst the successor states. It was retained in section 61 of the Punjab Re-organisation Act, 1966.

(34) Thus, it transpires, that a co-operative society has not been singled out for specific mention in section 61, as was the original thought. Rather, the words ''or other person'' are a later introduction. This puts an entirely different complexion on the whole matter. If the draftsman, who introduced those words, intended to change the meaning previously attributed to ''area of operations'' in relation to a society, he would have given some indication. It seems to me that he simply failed to realise that the same meaning of ''area of operations'' would not hold in regard to any ''other person''. He was not conscious of the discord that he was creating.

(35) Fortunately, the rules of interpretation of statutes are not helpless to overcome the difficulty. Although in Maxwell on the Interpretation of Statutes (12th ed.) it is said on page 278 that it is ''reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act'', on page 279 the comment is made that this presumption is ''not of much weight''. In the next sentence it is said : ''The same word may be used in different senses in the same statute and even in the same section.....''. Lord Parker Cj said in Maddox v. Storer (1962) 1 All. E.R. 831, that ''even where the same word does occur in the same section or the same schedule, the context must govern the true meaning''. In Rye v. Rye (1962) 1 All. E.R. 146, Lord Denning gave a ''different content to the word

"convey" '' in sub sections (3) and (4) of the same section.

(36) These authorities, and others to the like effect, show that it is permissible to interpret section 61 of the Punjab Re-organisation Act so as to give different meanings to the words ''the area of the operations'' depending on whether one is concerned with a ''co-operative society'' or ''other person''. Bearing in mind the historical context, am satisfied that in respect of a co-operative society those words were intended to denote what was stated in its bye-laws. Though in the present case the question does not strictly arise for decision, it does seem probable that as regards any ''other person'', those words would have the meaning suggested by the State of Punjab.

(37) For these reasons, I hold, that the State of Punjab is liable on the guarantee that was given to the bank, and not the State of Haryana or the Union of India. Issues Nos. 3, 4 and 8 are decided accordingly. 314 Issues Nos. 5 and 6.

(38) Section 79 of the Punjab Co-operative Societies Act says that ''No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at his office, staling the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.'' Admittedly, a notice was not served on the Registrar in accordance with this section before instituting the present suit. The question which has, Therefore, been debated at great length is whether this section applies to the case. In my judgment, it does not, for three reasons.

(39) First, section 79 of the Punjab Co-operative Societies Act cannot operate in relation to suits instituted in Delhi. Like section 80 of the. Code of Civil Procedure, it is a procedural provision and does not define or cofer any rights. In the words of Mr. Justice Mahajan : It is a part of the machinery for obtaining legal rights i.e., machinery as distinguished from its products'' : see State of Seraikella Vs. Union of India (UOI) and Another, . Even amongst sovereign states it is a settled principle of private international law that ''all matters appertaining to procedure are governed exclusively by that lex fori'' : see Cheshire''s Private International Law (8th ed.) page 661. By analogy the same principle applies as between the states Constituting the Union of India.

(40) Furthermore, Article 245 of the Constitution restricts the power of a state legislature to make laws only for its own state. It has no extra-territorial powers, and its laws cannot reach over to other states : see The State Vs. Narayandas Mangilal Dayame, . This territorial limitation is implicitly recognised by the Punjab Co-operative Societies Act itself in the Preamble, which describes it as an act to consolidate and amend the law relating to co-operative societies in the State of Punjab.'' And, section 1(2) could have said nothing more expansive than : It extends

to the whole of the State of Punjab''.

(41) There are numerous cases in which this doctrine has been applied. It will suffice if I refer to just a few. In Chhatto Lal Misser and Co. Vs. Naraindas Baijnath Prasad, , the 315 United Provinces Court of Wards Act 1912 was sought to be invoked by a party in a proceeding before the High Court of Calcutta. Rejecting the submission, Mr. Justice Remfry said the Act '''can have no effect beyond the jurisdiction of its own legislature''. He expounded the law as follows : ''.....no local legislature can prescribe procedure for any Court beyond its territorial jurisdiction, and any Act passed by a local legislature for its own Courts cannot be enforced beyond those territories. As far as this Court is concerned, the Act is in the same position as the legislation of a foreign country, and though such legislation can define the status of its own citizens and such status will be recognized by foreign Courts, when the actual status of a person is not affected, the municipal law of a foreign country cannot control or affect in any way the procedure of a Court of another country. As Bhagwatdas has the status of an ordinary British subject, he cannot be allowed to set up the special procedure of a local Act as a defense to this proceeding.''

(42) In Bk. Abdul Majid and another v. Union Co-operative Insurance Society Ltd.. Air 1970 J & K 148, the defendant was a society registered under the Maharashtra Co-operative Societies Act 1961. It raised a preliminary objection that the suits against it were not maintainable as notice had not been served us required by section 164 of that Act. The objection was overruled on the ground that ''the Act does not apply outside the State''. This case is on all fours with the one in hand.

(43) A converse example is provided by State of Jammu and Kashmir Vs. Lucky Glass Works (Plaintiff) and Another, . The suit was instituted in a court at Calcutta against the State of Jammu and Kashmir without serving notice u/s 80 of the Code of Civil Procedure. Notwithstanding that the Code did not extend to Jammu and Kashmir, it was held, that notice was necessary as the Code did apply in Calcutta. It was also observed, albeit obiter, that if the suit had been filed in Jammu and Kashmir, a notice ''would not have been necessary''. The case exhibits both the territorial force and limitation of a local law.

(44) Counsel for the society placed much reliance on National Agricultural Co-operative Marketing Federation Ltd. Vs. Govind Prasad Kanodia, . There, a suit was instituted in 316 the City Civil Court at Calcutta against a Co-operative Society registered at Delhi under the Bombay Co-operative Societies Act 1925 as extended to the State of Delhi. It was objected that the suit was not maintainable as notice had not been served on the Registrar, prior to the suit, as required by section 70 of that Act. The Bengal Co-operative Societies Act 1940 contained no similar provision and would not have presented any such impediment to the suit. Without much discussion, the court held that the Bombay Act in force in Delhi applied to the suit. No question seems to have been raised as to the territorial limits of that Act. Nor was State of Jammu and Kashmir v. M/s. Lucky Glass Works and another Air 1969 Cal

Ii, cited to the court, The argument seems to have turned solely on section 3 of the Multiunit Co-operaitive Societies Act 1942.

(45) It is rightly stated in that judgment that by virtue of that provision ''a Society is to be deemed as registered in the State where it is functioning though not actually registered there''. But, with respect, it must have been a misreading of the section that led the court into thinking that this fictional registration was only for the purposes of ''incorporation, regulation or winding up'' of the society. What the section says is exactly the opposite. After enabling a multi-unit co-operative society to be registered in the state in which its principal place of business is situated, the section goes on to say that the society: ''.....if so registered shall be deemed in any other State to which its objects extend to be duly registered in that other State under the law there in force relating to co-operative societies but shall, save as provided in sub-sections C2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the State in which it is actually registered.'' It is, Therefore, clear that for purposes of ''registration, control and dissolution'', a multi-unit society is subject to the law in force in the state in which it is ''actually registered'', and not of the state in which it is ''deemed'' to be registered, except to the small extent stated in sub-sections (2) and (3). In all other matters, the society is subject to the law of the latter state. The section is plain enough, and in any case, has been interpreted to this way by the Supreme Court in The Shamrao Vithal Co-operative Bank Ltd. Vs. Kasargod Pandhuranga Mallya, . That case. again, was not cited to the judges in Calcutta.

(46) It is obvious that the giving of notice prior to a suit has nothing to do with the ''registration, control and dissolution'' of a society. So, by applying section 3 of the Multi-Unit Co-operative Societies Act, it ought to have been held in the Calcutta case that, as regards the giving of notice, the Bengal Co-operative Societies Act, under which the society must be ''deemed'' to be registered, applied to the suit. Since the Bengal Act contained no provision requiring notice to be given prior to the institution of a suit against a society, it should have been held that the suit was maintainable. In my opinion, if I may say so with respect, the Calcutta, case was not correctly decided. Counsel for the society also cited Panchshila Industrial Co-Operative Societies (Multi-Unit) Vs. The Gurgaon Central Co-Operative Bank Ltd., Gurgaon, , but that case has no bearing on the point.

(47) Although the Society has pleaded want of notice only u/s 79 of the Punjab Co-operative Societies Act, and the issues have been framed accordingly, in the course of the argument the position under the law in force in Delhi was also discussed. The Bombay Co-operative Societies Act 1925 was in force in Delhi till 1972, when it was repealed and replaced by the Delhi Co-operative Societies Act 1972. Both these Acts contained provisions identical to section 79 of the Punjab Co-operative Societies Act. It was section 70 in the earlier Act, and section 90 in the

later one. But neither of those sections can be applied to the present suit. They can be applied only in respect of societies ''registered or deemed to be registered'' under those Acts for that is how they define a ''society''. The defendant society was not registered under either of those Acts. Nor can it be deemed to have been registered there under by virtue of any provision in the Multi-Unit Co-operative Societies Act because its objects never extended to Delhi. Hence, in no way can those Acts be applied to the defendant society.

(48) Secondly, section 79 of the Punjab Cooperative Societies Act does not apply in the present case because the suit is not brought in respect of any ''act'' of a ''co-operative society or any of its officers''. The cause of action is not anything done by the defendant society, but its failure or ''omission'' to pay the bank its dues. Even to come within (he extended concept of an ''act'' as defined in section 3(2) of the General Clauses Act 1897, the ''omission'' must be ''illegal''. In Amalgamated Electricity Co. (Belgaum) Ltd. Vs. Municipal Committee, Ajmer, . it was ruled that : ''Before an omission can be considered as an illegal omission it must be shown that the official concerned had omitted to 318 discharge some official duty imposed on him in public interest. The omission in question must have a positive content in it. In other words the non-discharge of that duty must amount to an illegality.'' Applying this criterion, it was held, that the failure on the part of a municipality to discharge its liabilities would not ''ordinarily become illegal omissions'' because ''The municipality or its members or office bearers cannot be. punished for their failure to pay the amount due to the plaintiff. To put it differently the omission complained does not entail any penal consequences for the public official responsibility for it.'' For the same reasons, the ''omission'' by the defendant society to pay what is due to the bank cannot be treated as an ''act''-

(49) Other cases under various statutes establish the same proposition. The Supreme Court cited with approval and followed (1934) 66 MLJ 506 (Privy Council) . In that case the Privy Council decided that a ''mere omission'' by a mortgagor to ''pay off the mortgage'' was not an ''act''. The same conclusion was reached in District Board Vs. Lala Behari Lal, , and Zila Parishad (District Board) Vs. Smt. Shanti Devi and Another, , in both of which, the suits were for recovering monies claimed to be due. The closest parallel to the instant case is The Ankola Urban Co-operative Credit Bank, Ltd. v. Laxmibai and another. 1958 Mys 582. There, it was held, that non-payment of rent by a society was not an ''act'' for the purpose of section 70 of the Bombay Co-operative Societies Act 1925, which, as I have previously mentioned, requires notice to be given prior to the institution of a suit. The reason stated was that ''There is no law which forbids mere non-payment or which makes non-payment illegal''. That dictum is equally valid in the present case.

(50) Thirdly, supposing, contrary to all that I have said, that the Punjab Co-operative Societies Act applies to this suit, and it is in respect of an ''act'' of the society, nevertheless, it is not an ''act touching the business of the society''. The cases on the

meaning of the word ''business'' are legion, and occur in diverse departments of the law. A good many were cited in the course of the argument. Most of them were under the section dealing with arbitration in the Co-operative Societies Acts of various states. A few were under the section requiring notice to be given before the institution of a suit against a society. These contained very little discussion. After reading them all, I am 319 convinced that nothing will be achieved by noticing the whole array, except that this judgment will be reduced to a digest and become ''a wilderness of single instances''. In the end, I have found, that only two are necessary for knowing the relevant guidelines.

(51) The first is Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, . The question which arose for decision was whether the dispute between the parties could be referred to arbitration u/s 91 of the Maharashtra Co-operative Societies Act 1961. One description of dispute encompassed by the section was that ''touching the . .. . business of a society''. As to the word ''touching'', the Supreme Court said, it ''is very wide and would include any matter which relates to or concerns the business of a Society, but we are doubtful whether the word "affects" should also be used in defining the scope of the word "touching". On the other hand, the word ''business'', it was said, ''has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws''. It was also observed that although ''the nature of business which a society does can be ascertained from the objects of the society, it is difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business''.

(52) In the case actually before the court, a co-operative bank was seeking to evict a tenant. It was held that the dispute did not ''touch'' the ''business'' of the bank. This case has been followed in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, , and Sabharwal Brothers and Another Vs. Smt. Guna Amrit Thandani of Bombay, .

(53) The other case is Narain Swadeshi Weaving Mills Vs. The Commissioner of Excess Profits Tax, . This time the court was called upon to interpret the word ''business'' in the setting of the Excess Profits Tax Act- It is some considerable comfort to find the court saying: ''Whether a particular activity amounts to any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture is always a difficult question to answer''. And, the court reiterated what it had said in an earlier decision ''that no general principle could be laid down which would be applicable to all cases and that each case must be decided on its own circumstances according to ordinary common sense principles''. During 320 the relevant accounting year ''the assessed firm''s business had entirely closed'', and it had no ''trading or commercial activity''. Taking a common sense view of the

matter, the court held, that the assessed had not carried on ''business'' during that year.

(54) Remembering that the word ''touching'' is wide, and the word ''business'' is narrow, and approaching the matter in a common sense way, where does the present case fail ? The loan was taken by the society for building a factory. This is stated in the ''agreement for overdraft'' and the deed of guarantee, and is not disputed. The intended business of the society was the bleaching, dyeing and printing of textiles and yarn. This was the main object of the society. But, when the loan was taken, even the factory was still only a dream. At that time, the society had no ''trading or commercial activity''. In these circumstances, howsoever widely the word ''touching'' may be interpreted, to say that the taking of the loan from the bank was an ''act touching the business of the society'' is to speak in a language which is so unreal as to be practically devoid of meaning. Common sense boggles at the idea. The loan was taken to build a factory, which, if all went well, and it went into production, would have enabled the society to go into business. No doubt, in metaphysical terms one can find a connection between the loan and the business, but, I think it is far too remote for the law. As the Supreme Court warned, not everything that a society does is a part of its business.

(55) On each and all of these grounds, I decide issue No. 5 against the society and in favor of the bank. Therefore, issue No. 6 does not arise for determination. Of course, had I decided issue No. 5 the other way, there would have been no option but, also, to decide issue No. 6 against the bank. issue No. 9

(56) As a result of my findings on the issues, I would grant to the bank a decree for Rs. 17,16,758.96 against the defendant society and the State of Punjab. I would further allow interest at the rate of 6 per cent per annum on the principal sum of Rs. 12 lakhs from the date of the suit till today, and, thereafter, at the same rate till the date of payment. The bank will also have its costs of the suit.

(57) As against the State of Haryana and the Union of India I would dismiss the suit, but as the bank was justifiably in doubt as to which successor state was liable on the guarantee given by the then existing State of Punjab, I would make no order as to costs.