and a private complainant was for the first time given the right to file an application for leave to appeal against the orders of acquittal passed in a private complaint. This shows that the Legislature was alive to the question regarding the conferment of some rights on the private complainants and yet section 545 of the Code was allowed to remain as it was originally enacted. A careful reading of these provisions shows that the Legislature has by implication indicated that a private complainant has no right of being heard in an appeal filed by an accused in a cognizable case. In view of these circumstance, the order of acquittal passed by the learned Additional Sessions Judge cannot be regarded as illegal.

(5) I may, however, add that in a suitable case it may be proper for an appellate Court to hear a complainant or an injured witness who has been awarded compensation by the learned trial Magistrate, but the orders of acquittal passed by it cannot be set aside in exercise of revisional powers, only on the ground that it failed to hear an injured witness who had been awarded compensation under section 545(b) of the Code of Criminal Procedure. There is no merit in this petition and the same is dismissed.

N.K.S.

APPELLATE CIVIL

Before P. C. Pandit and B. S. Dhillon, JJ.

SUNDER SINGH, ETC.,—*Appellants.*

versus

THE CENTRAL CO-OPERATIVE BANK LTD., KARNAL, ETC.,—*Respondents.*

E. F. A. No. 154 *of* 1966.

January 25, 1973.

Punjab Co-operative Societies Act (XXV *of* 1961)—*Sections* 55, 56, 68 *and* 82—*Co-operative Bank advancing loan to a Co-operative Society on hypothecation of properties and on the guarantees of the sureties, who are also members of the Society—Entire dispute regarding payment of the loan both by the Society and the sureties referred to arbitration—Such reference—Whether valid qua the Bank and the sureties—Sureties not heard and award given—Whether makes the award without jurisdiction.*

Held, that where a Co-operative Bank advances loan to a Co-operative Society against the hypothecation of its properties as well as guarantees given by sureties who are also members of the Society the dispute regarding the payment of the loan is indivisible qua the Society as well as the sureties. This dispute cannot be split up because it will lead to anamolous resolts. The arbitrator can no doubt decide the dispute between the Bank and the Society and if the Civil Court is called upon to decide the dispute between the Bank and the sureties, it is likely to result in two contradictory order. If the matter is allowed to go to a Civil Court between the Bank and the sureties after the final award is given regarding the entire dispute, the same questions which were decided by the arbitrator will again arise before the Civil Court. The result is that there is likelihood of two inconsistent orders, one by the arbitrator and the other by the Civil Court. Such cannot be the intention either of the law or the executants of the hypothecation deed. It is not possible to conceive that on the basis of one hypothecation deed, two disputes may arise, one between the Bank and the Society and the other between the Bank and the sureties. Hence the dispute regarding the payment of the loan between the Bank and the Co-oprative Society as well as specifically qua the sureties can be legally referred to arbitration under section 55 of the Punjab Co-operative Societies Act. 1961 and such a reference is valid in law.

Held, that the objections of the sureties of their not being heard by the arbitrator before giving the award can only be raised in an appeal against the award under section 68 of the Act. On their failure to file an appeal, the award becomes final qua them. By virtue of section 82 of the Act, any order, decision or award made under the Act cannot be questioned in a Civil Court on any ground whatsoever. The objections of the sureties of not being heard cannot make the award without jurisdiction. An order made in the absence of a party and without hearing him is voidable and not void. It has to be quashed or set aside. It will hold good until after knowledge the aggrieved party has it removed according to law.

Case referred by Hon'ble Mr. Justice Gurdev Singh vide order, dated 1st December, 1969 to a Larger Bench for decision of an important question of law, and the Devision Bench consisting of Hon'ble Mr. Justice Prem Chand Pandit and Hon'ble Mr. Justice Bhopinder Singh Dhillon, finally decided the case on 25th January, 1973.

Execution First Appeal from the decree of the Court of Shri Harbans Singh, Senior Sub-Judge, Karnal, dated 22nd January, 1966, dismissing the objections with costs.

P. S. Jain and V. M. Jain, Advocates, *for the appellants.*

D. N. Aggarwal, Advocate, with B. N. Aggarwal, Advocate, *for the respondents.*

JUDGMENT

PANDIT, J.—On the request of Ladwa Hira Goods Transport Co-operative Society, Ladwa, district Karnal, hereinafter referred to as the Society, the Central Co-operative Bank, Karnal, hereinafter called the Bank, agreed to advance a loan up to the limit of Rs. 30,000 to the Society on the condition that it should execute a hypothecation deed together with a surety bond in favour of the Bank and thereby mortgage the movable and immovable property of the sureties and also of the Society. The Society desired to have a loan of Rs. 27,000 for the time being, out of which Rs. 5,000 had already been taken by it and the remaining amount of Rs. 22,000 was to be received later on. It was said that the balance of Rs. 3,000 would be got from the Bank when required. In order to get this loan, the Society executed a registered hypothecation deed, dated 18th April, 1956, through its President Piara Singh. In the said document, Piara Singh as well as two other sureties, who were also the members of the Society, mortgaged without possession their properties specified in the deed, which was also signed by them. With regard to the property of the Society, which had to be hypothecated, it was stated that—"all the trucks etc., purchased with the aforesaid amount of loan and other complete trucks or other property of the Society, which it purchased, shall remain hypothecated with the aforesaid Bank and the trucks so purchased shall be got comprehensively insured and insurance rights of the Society shall also remain hypothecated with the Bank. 'It was also mentioned in the deed that the executants thereof jointly and severally declared that if the Society, which was the principal debtor, did not pay the amount, as per regulations of the Bank and the terms of the hypothecation deed, and also the damages and costs as stated in clause 4 of the deed or avoided its payment, the Bank would be entitled to recover the said amount with interest, costs and damages stated in the clause from the persons and also the hypothecated and unhypothecated, movable and immovable properties of the executants Nos. 1 to 6, the sureties, "without taking any steps for its recovery from the Society, the principal debtor."

(2) After the taking of the loan on the basis of the hypothecation deed, it appears that some payments towards the loan were made by the Society to the Bank, but later on nothing else was received from the Society. A dispute, therefore, arose between the Society and the Bank and it was referred for determination to an Arbitrator by

the Registrar of the Co-operative Societies,—*vide* his order dated 25th October, 1960, obviously under section 55 of the Punjab Co-operative Societies Act, 1961, hereinafter called the Act. On 22nd December, 1961, the Arbitrator gave the following award:—

> "Whereas the following matter in dispute between the Karnal Central Co-operative Bank Ltd., Karnal, and the Ladwa Hira Goods Transport Society Ltd., has been referred to me for determination by the Registrar's order, dated 25th October, 1960, I having duly considered the matter hereby direct that the said The Ladwa Hira Goods Transport Society Ltd., do pay to the said the Karnal Central Co-operative Bank Ltd., Karnal, the sum of Rs. 14,736.87 principal with Rs. 929.57 interest up to 30th June, 1961 and costs Rs. 1,566.56 or Rs. 17,230 in all, together with interest at the rate of 6 per cent per annum until the realization of the principal sum, viz. 15,199.00.
>
> The above amount shall be paid by the said The Ladwa Hira Goods Transport Society Ltd. If not so paid, the amount may be realised through a Civil Court either by the sale of all the property of the Society which was specifically mortgaged for the satisfaction of this debt and which is shown in detail in the schedule attached to this award, or of any other property belonging to the Society or its members or by arrest of the members of the Society. Award given in the presence of the Bank representative, Manager of the Bank, the President of the Society being absent.
>
> No costs should be realized if the payment is made without prosecution of award."

(3) But before the said award was given, on 30th April, 1959, Kartar Singh, Sunder Singh and Mohinder Singh, the members of the Society, who had signed the deed, transferred their shares to Giani Maan Singh and others and it is said that their names were, therefore, removed from the Membership of the Society. On 26th December, 1962, the Bank filed the first application for the execution of the award in the Civil Court, because under the provisions of the Act, an award made by an Arbitrator amounted to a decree. The same was, however, consigned to the record room. The Bank then filed the second application for the same purpose in February, 1964 and on 11th March, 1964, the Society went into liquidation. During the

execution, it is said that the property hypothecated by the deed, dated 18th April, 1956, was attached in the decree of the Bank against the Society. In July, 1964, Kartar Singh, Sunder Singh and Mohinder Singh filed objections under section 47 read with section 60 of the Code of Civil Procedure, against the execution of the award having been taken out against them, saying that their property was not liable to be attached or sold as the decree was not executable against them. Their objections *inter alia* were that they had ceased to be the members of the Society with effect from 30th April, 1959, i.e., two years prior to the award, and no dispute thereafter between them and the decree-holder could be referred to arbitration and, therefore, they were not liable to pay anything to the Bank. Itw as also said that they were not made parties to the arbitration proceedings and the same were taken behind their back. They had no notice even regarding the appointment of the Arbitrator. In fact, the dispute between them and the Bank could not be referred to arbitration. From 30th April, 1959, when the Society passed the resolution, under which Sunder Singh, Mohinder Singh and Kartar Singh had transferred their shares, the transferees had taken upon themselves the entire liability for the re-payment of the debt due from the Society. It was further submitted that since the Society had gone into liquidation and a Liquidator had been appointed, no execution could be taken against them.

(4) The decree-holder Bank, in its reply, stated that such objections were previously raised on different occasions by the judgment-debotrs and they were dismissed. It was pleaded that the decree was valid and executable and the executing Court could not go behind it. The objectors could not avoid their liability under the same by making a fradulent transfer of their membership and the decree-holder Bank also never recognised any such transfer. It was further said that notice regarding arbitration was duly served on the judgment-debtors and the matter was, therefore, rightly referred to the Arbitrator.

(5) On the pleadings of the parties, the following issues were framed:—

> "(1) Whether Sunder Singh, Mohinder Singh and Kartar Singh were not members of the judgment-debtor Society from 30th April, 1959 ? If so, to what effect ?

(2) Whether the judgment-debtors are not bound by the award for reasons given in the objection petition ?

(3) Whether the dispute could not be referred to the arbitrator?

(4) Whether the other members of the judgment-debtor Society had taken over liability after 30th April, 1959?

(5) Whether the execution application is not maintainable against judgment-debtors on the ground that the judgment-debtor Society has gone in liquidation ?

(6) Whether the judgment-debtor Society owns its own property and, therefore, the execution application is not maintainable against the judgment-debtors ?

(7) Whether Piara Singh was not the member at the time the debt in question was taken ? If so to what effect ?

(8) Whether the judgment-debtors or any one of them is stopped from raising any of the above pleas ?

(6) The executing Court held that Sunder Singh, Mohinder Singh and Kartar Singh, ceased to be the members of the judgment-debtor Society with effect from 30th April, 1959, on which date a resolution was passed by the Society, by which it discharged these three persons from the Membership of the Society and their shares were transferred to Maan Singh, Ajit Singh and Avtar Singh, who took the liability of those persons. It was further held that Piara Singh was a member of the Society at the relevant time when the debt in question was taken, that the judgment-debtors or any of them were not estopped from claiming that they were not liable for the decretal amount, that it was not suggested as to why the dispute, in the instant case, could not be referred to Arbitration, that the appointment of a Liquidator did not in any way preclude the decree-holder Bank from proceeding with its remedy, which was available to it against a member or a past member of the judgment-debtor Society, who was in a position to pay, that even though the Society had its own assets, the decree-holder was not in any way bound to proceed against those assets and not enforce the mortgage of the property, which had been hypothecated with the Bank, and that the decree-holder could proceed against an individual member or a past member of the Society, if he could be held liable under the law. It was also held that the Bank was not served with a notice intimating that the said three persons had been discharged from their liability and that the other members had taken their liability on themselves,

with the result that the Bank was not in a position to have the option of withdrawing its deposits or loan as was contemplated by section 12(2)of the Act. It was admitted even by the judgment-debtors that the debt to which the decree related, was in existence at the time when these objectors ceased to be the members of the Society. They were, thus, liable for the debts in question. It was proved on the record that during the arbitration proceedings, the Society was represented before the award was given. According to the learned Judge, no notice was required to be served on the objectors, who were Members of the Society, to be present during the arbitration proceedings. Notice was required to be given to the Society, which was duly given. On these findings, the objections were dismissed.

(7) Against that decision, Sunder Singh, Mohinder Singh and Kartar Singh, filed an execution first appeal in this Court. The same, in the first instance, came before Gurdev Singh J., before whom the case of the appellants was that they had ceased to be the members of the Society with effect from 30th April, 1959, because a resolution to that effect was passed by the Society more than two years before the winding up of the Society, and their liability had ceased. Reliance in this connection was placed on section 22 of the Act. On behalf of the Bank, it was said that notice of this change had to be given to it and without such a notice, the appellants were not discharged from their liability for the debt. Reference in this regard was made to section 12 of the Act. The fate of the case, according to the learned Judge, turned upon the interpretation of sections 12 and 22 of the Act and since there was no direct authority on the point and section 12(1) of the Act did not appear to be happily worded and because the interpretation of that provision was of considerable importance, as disputes between the Co-operative Societies and their creditors arose frequently, he thought it desirable that the position with regard to the liability of the past members be clarified. He, accordingly, referred the case to a larger Bench on December 1, 1969, and that is how the matter has been placed before us.

(8) The main argument raised by the appellants was that they had ceased to be the members of the Society with effect from 30th April, 1959, and, accordingly, no dispute between them and the Bank could be referred to arbitration and they could not, therefore, be made liable under the award against the Society, especially when they were not personally impleaded in any such proceedings, which

had been taken behind their back and even the appointment of the Arbitrator was made without notice to them.

(9) It was conceded by the appellants that under section 55(1)(d) of the Act, a dispute between one Society and any other Co-operative Society could be referred to arbitration. But it was strenuously urged that a dispute between the Bank, which was, admittedly, a Co-operative Society under the Act, and the appellants, who were sureties for the debt taken by the Society from the Bank, could not be so referred and, therefore, the award, so far as they were concerned, was without jurisdiction and could not be enforced against them, especially when they were not made parties to the arbitration proceedings, which had been conducted behind their back.

(10) As I have already said, on the basis of the registered hypothecation deed, dated 18th April, 1956, a loan was taken by the Society from the Bank after duly executing that deed and mortgaging the property mentioned therein with the Bank. The Society did make certain payments, but since it did not repay the balance of the loan, a dispute arose regarding this matter. In my opinion, there is no escape from the conclusion that the dispute was one and indivisible. The Society had taken the loan and the Bank was to recover the same from it. By the hypothecation deed, on the strength of which the loan had been taken, the appellants, who were also the members of the Society, had mortgaged their property as well. This matter, i.e., the dispute between the Bank and the Society, was correctly referred to arbitration under section 55(1) (d) of the Act. The Arbitrator had to decide (a) whether the loan, on the basis of the hypothecation deed, had in fact been taken by the Society; (b) whether the Society had paid back the said loan and if so, to what extent; (c) how much amount was exactly due to the Bank from the Society and (d) in what manner the said loan had to be recovered from the Society. All these were matters, which were inter-connected and the dispute was only one, namely, regarding the debt taken by the Society from the Bank. The Arbitrator considered this matter and gave his award on 22nd December, 1961. He came to the conclusion that the Society had to pay a sum of Rs. 14,736.87 as principal, Rs. 929.57 as interest and Rs. 1,566.56 as costs, i.e., 17,230 in all, to the Bank. It, therefore, directed that this amount together with interest at the rate of 6 per cent per annum until the realization of the principal sum be paid by the Society to the Bank. If the said amount was not so paid, it would be realized through

a Civil Court either by the sale of all the property of the Society, which was specifically mortgaged for the satisfaction of the debt and which was shown in detail in the schedule attached to the award, or of any other property belonging to the Society or its members, or by the arrest of the members of the Socity. From the hypothecation deed, it is apparent that the property, which was mortgaged, was of the sureties mentioned therein, who were also the members of the Society. So far as the property of the Society was concerned, in the deed it had been stated that the trucks, which would be purchased with the loan, would also be deemed to have been hypothecated. That means that the property specifically mortgaged for the satisfiaction of the debt on the date of the hypothecation deed was that of the persons mentioned therein, who had also actually signed the said deed. The award made it clear that if the Society did not repay the said amount, it would be realised from the property, which had been mortgaged, and the mortgage-deed was made a schedule to the award. It was, therefore, apparent that the decretal amount had to be realised from that very property, if, of course, the Society did not pay back the amount. If the appellants had any objections against the award, namely, that they were not made parties to it or that the arbitration proceedings were conducted behind their back or that the Arbitrator was appointed without any Act, notice to them, they should have gone up in appeal against that award under section 68(i) (h) of the Act, which said:—"that an appeal shall lie under this section against any decision or award made under section 56."

(11) It may be stated that a dispute is referred to arbitration under section 55 and an award is given under section 56 of the Act. There is a specific remedy provided by the Act for a party, who is aggrieved with an award. The jurisdiction of Civil Courts, however, is barred under section 82 of the Act. Section 82(3) of the Act says:

> "Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever."

(12) It is, thus, clear that as the appellants did not go up in appeal against the award, it became final *qua* them and it could not be questioned in a Civil Court on any ground whatsoever. The

jurisdiction of the Civil Courts in this behalf is specifically barred under section 82(3) of the Act.

(13) It was contended by the learned counsel for the appellants that in the instant case, the award being without jurisdiction, the Civil Courts will have the power to decide the question raised by them.

(14) The Civil Courts will have jurisdiction only if the Arbitrator lacked *inherent jurisdiction* to decide this matter. But, it is not understood as to how the award was without jurisdiction and the Arbitrator lacked inherent jurisdiction to decide this dispute

(15) While analysing the notion of jurisdiction of a Court, Sir Asutosh Mookerjee, Acting C.J. in a five Judges Full Bench of the Calcutta High Court in *Hridav Nath Roy* v. *Ram Chandra Barma Sarma* (1) observed:

> "An examination of the cases in the books discloses numerous attempts to define the term "jurisdiction", which has been stated to be "the power to hear and determine issues of law and fact;" "the authority by which the judicial officers take cognizance of and decide causes;" "the authority to hear and decide a legal controversy;" "the power to hear and determine the subject-matter in controversy between parties to a suit and to adjudiciate or exercise any judicial power over them;" "the power to hear, determine and pronounce judgment on the issues before the Court;" "the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments into effect;" "the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution." * * * * * * *. This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value, and nature of the subject-matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance,

(1) A.I.R 1921 Cal. 34.

testamentary or matrimonial causes, acquisition of lands for public "purposes, record of rights as between landlords and tenants. This classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject-matter is obviously of a fundamental character. Given such jurisdiction, we must be careful to distinguish exercise of jurisdiction from existence of jurisdiction; for fundamentally different are the consequences of failure to comply with statutory requirements in the assumption and in the exercise of juridiction. The authority to decide a cause at all and not the decision rendered therein is what makes up jurisdiction; and when there is jurisdiction of the person and subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. * * * *. But the distinction between existence of jurisdiction and exercise of jurisdiction has not always been borne in mind and this has sometimes led to confusion.

* * * *. * * * *.

Since urisdiction is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. As an authority for this proposition reference may be made to the celebrated *dictum* of Lord Hobhouse in *Malkarjun* v. *Narhari* (2). "A Court has jurisdiction to decide "wrong as well as right. If it decides wrong, the wronged part can only take the course prescribed by law for setting matters right; and that course if not taken, the decision, however wrong, cannot be disturbed." Lord Hobhouse then added that though it was true that the Court made a sad mistake in following the procedure adopted, still in so doing the Court was exercising its jurisdiction; and to treat such an error as destroying the jurisdiction of the Court was calculated to introduce great confusion into the administration of the law. The view that jurisdiction is

(2) I.L.R. (1900) 25 Bom. 337.

entirely independent of the manner of its exercise, and involves the power to decide either way upon the facts presented to the Court, is manifestly well-founded on principle, and has been recognised and applied elsewhere: * * * There is a clear distinction between the jurisdiction of the Court to try and determine a matter, and the erroneous action of such Court in the exercise of that jurisdiction. The former involves the power to act at all, while the latter involves the authority to act in the particular way in which the Court does act. The boundary between an error of judgment and the usurpation of power is this: the former is reversible by an Appellate Court within a certain fixed time and is, therefore, only voidable, the latter is an absolute nullity. When parties are before the Court and present to it a controversy which the Court has authority to decide, a decision not necessarily correct but appropriate to that question is an exercise of judicial power or jurisdiction. So far as the jurisdiction itself is concerned, it is wholly immaterial whether the decision upon the particular question be correct or incorrect. Were it held that a Court had jurisdiction to render only correct decisions, then each time it made an erroneous ruling or decision, the Court would be without jurisdiction and the ruling itself void. Such is not the law, and it matters not what may be the particular question presented for adjudication, whether it relates to the jurisdiction of the Court itself or affects substantive rights of the parties litigating, it cannot be held that the ruling or decision itself is without jurisdiction or is beyond the jurisdiction of the Court. The decision may be erroneous, but it cannot be held to be void for want of jurisdiction."

(16) It was then said that the dispute between the Society and the Bank could be referred to the Arbitrator, but the dispute between the Bank and the members of the Society, who were sureties and had signed the hypothecation deed, could not be so referred.

(17) I have already said, the dispute was one and indivisible and it could not be split up and it would lead to anomalous results if the interpretation put on the hypothecation deed and the award by the appellants were to be accepted. In that case, it would mean that the

Arbitrator could, admittedly, decide the dispute between the Bank and the Society, whereas the Civil Court would decide the so-called dispute between the Bank and the appellants-sureties, who had signed the hypothecation deed. Let us now examine the consequences of this interpretation.

(18) In the first instance, what has the Arbitrator to decide in the dispute between the Bank and the Society? Has the Arbitrator not to look to the mortgage deed, on the basis of which the Bank agreed to give the loan to the Society ? Can the loan be split up? The loan admittedly, would not have been given if the property mentioned in the deed had not been mortgaged with the Bank. The Arbitrator had to decide whether or not the Society received the loan, how much of it was paid back and how much remained to be recovered from the Society and in what manner the recovery had to be made. It cannot be said that all these things did not form one dispute and the same was obviously between the Bank and the Society. While deciding it, the Arbitrator had to say that so much amount was received by the Society, that much had been paid back out of it and the balance amount due was so much and it had to be realised, according to the terms of the hypothecation deed, from the properties specifically mortgaged, in case the Society did not return the same. That would be a valid award, even according to the contention of the learned counsel for the appellants.

(19) If, on the other hand, the matter regarding the dispute between the sureties and the Bank was to be tried by the Civil Court, the question naturally would arise as to what had the Civil Court to determine ? In the Civil Court, the judgment-debtor, namely, the Society, had to be impleaded. Some property of the Society, which was to be acquired with the loan taken, was deemed to have been mortgaged. In that capacity also the Society had to be impleaded, as being one of the mortgagors. In other words, the Society and the sureties would again be before the Court and there also the sureties could take up the plea that the Bank did not pay the entire loan to the Society or that the latter had repaid more than what was alleged by the former, or that the Bank should first exhaust its remedies against the Society by disposing of its property, which it might have acquired with the loan, or that they had executed the mortgage deed under misapprehension, etc., etc. The same questions would then be determined by the Court. The result would, therefore, be that there

could be two inconsistent orders—one made by the Arbitrator and the other by the Civil Court. The first would be a valid award, even according to the submission of the learned counsel for the appellants. The order passed by the Civil Court would also be in accordance with law, if the argument of the counsel for the appellants was correct. Such could not be the intention either of the law or the executants of the hypothecation deed. As I have already said, it is not possible to conceive that on the basis of this deed, two disputes had arisen—one between the Bank and the Society and the other between the Bank and the sureties, the former being under the Act by means of a reference to arbitration and the other cognizable by a Civil Court. The conclusion is, therefore, irresistible that the dispute was one and and decidable under the Act. Any objection of whatever nature, viz., the appellants not being made parties, the arbitration proceedings having been conducted behind their back, the Arbitrator having been appointed without notice to them, should have been raised by means of an appeal against the award under section 68(1)(h) of the Act. By virtue of section 82 of the Act, any order, decision or award made under the Act could not be questioned in any Court on any ground whatsoever. All the objections, referred to by the appellants, could not make the award without jurisdiction. Even if these objections were to be accepted, at the most, all that could be said was that the award was contrary to law or that proper procedure had not been followed by the Arbitrator, but it would not make award without jurisdiction. That can be only, as I have already said, if the Arbitrator lacked inherent jurisdiction to try the dispute. Such is not the case here.

(20) In a Full Bench decision of this Court in *Dhaunkal* v. *Man Kauri and another* (3). Mehar Singh C.J., who prepared the judgment of the Court, held that an order made in the absence of a party and without hearing him was voidable and not void and it had to be quashed or set aside. It would hold good until, after knowledge, that party had had it removed according to law. While dealing with this matter, the learne Judge observed:

> "In Halsbury's Laws of England, Third Edition, Volume 30, at page 719, it is stated that 'if the rules of natural justice are not observed, the decision will be voidable, not absolutely void', and the statement is based on *Dimes* v. *Grand*

(3) I.L.R. (1970) 2 Pb. & Hr. 220=1970 P.L.J. 402.

Junction Canal Proprietors (4), in which the decree of the Lord Chancellor had been challenged on the ground of personal interest and thus bias while sitting as a Judge in the cause and argument was that the decree was utterly without jurisdiction and completely void, but it was held that it was voidable and must consequently be reversed and not altogether void. Again in Halsbury's Laws of England, Volume II, at page 66, it is stated that 'a decision of the inferior tribunal will be quashed if the party against whom it is given was not given notice of the hearing', and this is based on the decision of the House of Lords in *Arthur John Spackman* v. *The Plustead District Board of Works* (5), in which, at page 240, it was observed—"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a Judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice." * * * * * *. It will be seen that in none of these cases has an order made in absentia, or contrary to the principles of natural justice, been held to be void or a nullity, in the sense as not existing in law, but was held either as voidable or ineffective or open to being set aside and quashed. * * * * In *Ittyavira Mathai* v. *Varkey Varkey* (6), their Lordships, held that "where a Court having jurisdiction over the subject-matter and the party passes a decree it cannot be treated as a nullity and ignored in subsequent litigation even if the suit was one barred by time. If the

(4) (1852) 3 H. L. cases 759.

(5) (1885) 10 A.C. 229.

(6) A.I.R. 1964 S.C. 907.

suit was barred by time and yet the Court decreed it, the Court would be committing an illegality and, therefore, the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a Court having jurisdiction over the subject-matter of the suit and over the parties thereto, though bound to decide right may decide wrong, and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter and it had the jurisdiction over the party and, therefore, merely because it made error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. Courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities. It is true that section 3 of the Limitation Act is peremptory and that it is the duty of the Court to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. Even so it cannot be said that where the Court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity. * * * *. As already pointed out, the question of nullity arises where there is want of lack of jurisdiction and this was the argument in *Dimes's case* (4), before the House of Lords, but the conclusion was that the violation of one of the principles of natural justice, in that case the decree having been made by a Judge with personal interest, did not oust the jurisdiction and render the decree void but it was voidable. The difference, as far as I have been able to see, is that where a decree or order is void, it is *non est*, and may be ignored altogether, but, when it is voidable, the aggrieved party has to proceed to get rid of it in accordance with law, and where it fails to do so, it being within jurisdiction remains and the party is then not in a position to say that it is *non est*".

(21) It may be mentioned that the learned counsel for the appellants could not cite even a single decision of any Court in which in circumstances similar to those of the present one, the award was ever held to be without jurisdiction and a nullity.

(22) It is unfortunate that the loan was taken in April, 1956 and the award was made in 1961 and until now the Bank has not been able to recover this large amount either from the Society or the executants of the deed, who have been evading payment on one ground or the other for the last 15-16 years.

(23) In view of what has been said above, this appeal fails and is dismissed. In the circumstances of this case, however, the parties are left to bear their own costs.

DHILLON, J.—I agree.

B. S. G.

APPELLATE CRIMINAL.

Before P. S. Pattar, J.

JOGINDER SINGH,—*Appellant.*

versus

THE STATE OF HARYANA,—*Respondent.*

Cr. A. No. 1111 *of* 1972.

January 25, 1973.

Indian Penal Code (Act XLV of 1860)—Section 497—Code of Criminal Procedure (Act V of 1898)—Sections 4(1)(h) and 199—Husband lodging report with the police regarding the commission of offence of rape against his wife—Accused tried for the offence, but found not to have committed the same—Such accused—Whether can be convicted for offence of adultery under section 497, Penal Code, without a complaint by the husband—Statement of the husband in court in support of the police case—Whether can be treated as complaint.

Held, that according to section 199 of the Code of Criminal Procedure, no court can take cognizance of an offence under section 497, Indian Penal Code, except upon a complaint made by the