IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2123 OF 2013
WITH
CIVIL APPLICATION NO. 479 OF 2016

Shree Laxmi Anand Public Charitable Trust	}	Petitioner
versus		
Kolhapur District Central Co-operative Bank Ltd.	}	Respondent

WITH
WRIT PETITION NO. 9478 OF 2013
WITH
CIVIL APPLICATION NO. 480 OF 2016
AND
CIVIL APPLICATION NO. 2796 OF 2016

Mr. Mukesh Sarnobat	}	Petitioner
versus		
Kolhapur District Central Co-operative Bank Ltd.	}	Respondent

Mr. Atul Damle – Senior Advocate with Mr. Ketan Joshi for the petitioners in both petitions and for applicant in CAW/479/2016.

Mr. Y. S. Jahagirdar – Senior Advocate with Mr. Ayush Agarwala and Mr.Himanshu Vidhani i/b. M/s. Khaitan and Co. for respondent no. 5 in WP/9478/2013 and for the applicant in CAW/480/2016 and CAW/2796/2016.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- OCTOBER 27, 2016

P.C. :-

1. In both these petitions, the essential and real controversy is whether the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) can be invoked by a co-operative bank, namely a co-operative society carrying on banking business under a licence from the competent authorities. That entity is registered as a co-operative society under the Maharashtra Co-operative Society Act, 1960. The argument is that such an entity does not fall within the definition of the term "bank" as defined under section 2(c) of the SARFAESI Act.

2. Though there was a notification issued in relation to a co-operative society carrying on banking business by the Central Government and within the meaning of section 2(c)(v), according to Mr. Damle, the said notification has been struck down by a judgment of the Gujrat High Court. That judgment was delivered on 22nd April, 2013 in a batch of special civil applications. The concluding paragraph of the judgment is that the notification dated 28th January, 2003, relying upon which the bank has proceeded in this case, is ultra vires, unconstitutional, non-est and *void ab initio*. The co-operative banks were restrained from taking action against its members under section 13(4) of the

SARFAESI Act. Mr. Damle, however, fairly states that this court has consistently taken a view that even a co-operative bank can invoke the SARFAESI Act. Our attention is invited to the judgment in the case of *M/s. Khaja Industries vs. State of Maharashtra and Anr.*[1]. It is also stated that this view is followed in the case of *Maharashtra State Co-operative Bank Ltd. vs. State of Maharashtra and Ors.*[2]. Thus, this court has consistently taken a view that there is nothing wrong with the notification. We, therefore, think that going by judicial discipline, we can take note of the declaration by the Gujrat High Court. In these circumstances, following the judgments of this court, we decline to entertain these petitions, but by clarifying that all remedies are open for being resorted to by the petitioners and the forums competent to adjudicate the matters should decide the same in accordance with law. All contentions on merits are kept open.

3. In the light of the disposal of the writ petitions, the civil applications do not survive and stand disposed of as such.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**

1 **2007(6) ALL MR 887**
2 **2008(4) ALL MR 149**