IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.285 OF 2013
IN
WRIT PETITION NO.5386 OF 2012

Shrikant Bhujaballi Bahirshet
Age 64 years, Occupation : Retired
Residing at 101, C Ward, Kasargalli ..... **Appellant.**
Kolhapur **(Org. Petitioner)**

versus

Shamrao Vithal Co-operative Bank Ltd.,
SVC Tower, Nehru Road, Santacruz, ... **Respondent.**
Mumbai – 400 055 **(Org. Respondent)**

WITH
LETTERS PATENT APPEAL NO. 250 OF 2013
In
WRIT PETITION NO. 5191 OF 2012

Pramod Sahadev Parab ....**Appellant**
V/S
Shamrao Vithal Co-operative Bank Ltd. ....**Respondent**

WITH
LETTERS PATENT APPEAL NO. 253 OF 2013
In
WRIT PETITION NO. 5193 OF 2012

Namrata Milind @ Yashwant Musale ....**Appellant**
V/S
Shamrao Vithal Co-operative Bank Ltd. ....**Respondent**

WITH
LETTERS PATENT APPEAL NO. 254 OF 2013
In
WRIT PETITION NO. 5374 OF 2012

Kalpana Sanjay Patil ....**Appellant**
V/S

Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 255 OF 2013
In
WRIT PETITION NO. 5360 OF 2012

Prakash Chandrakant Altekar ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 256 OF 2013
In
WRIT PETITION NO. 4850 OF 2012

Prakash Tatoba Kagwade ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 257 OF 2013
In
WRIT PETITION NO. 5368 OF 2012

Uday Sakharam Kulkarni ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 258 OF 2013
In
WRIT PETITION NO. 5377 OF 2012

Ajit Vasantrao Limbekar ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 259 OF 2013
In
WRIT PETITION NO. 4625 OF 2012

Mahavir Neminath Narade ....Appellant

V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 260 OF 2013
In
WRIT PETITION NO. 5376 OF 2012

Nemgonda Rama Chougule ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 261 OF 2013
In
WRIT PETITION NO. 5379 OF 2012

Dhanpal Shivappa Athane ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 262 OF 2013
In
WRIT PETITION NO. 4622 OF 2012

Mr. Bandu Devappa Adake ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 263 OF 2013
In
WRIT PETITION NO. 5458 OF 2012

Akaram Bapu Pujari ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 264 OF 2013
In
WRIT PETITION NO. 5454 OF 2012

Sunanda Subhash Daragshetti ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 265 OF 2013
In
WRIT PETITION NO. 5391 OF 2012

Jinpal Bandu Suryawanshi ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 266 OF 2013
In
WRIT PETITION NO. 5369 OF 2012

Mahavir Annaso Melwanki ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 267 OF 2013
In
WRIT PETITION NO. 5199 OF 2012

Urjit Nilkantharao Japtamulunkha ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 268 OF 2013
In
WRIT PETITION NO. 5372 OF 2012

Laxman Dattatraya Shelke ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 269 OF 2013
In
WRIT PETITION NO. 5396 OF 2012

Mahavir Rama Gomar ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 270 OF 2013
In
WRIT PETITION NO. 5390 OF 2012

Balgonda Bapu Patil ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 271 OF 2013
In
WRIT PETITION NO. 5373 OF 2012

Hemantkumar Vyankappa Wadd ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 272 OF 2013
In
WRIT PETITION NO. 5207 OF 2012

Mahavir Kallappa Chougule ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 273 OF 2013
In
WRIT PETITION NO. 5363 OF 2012

Milind Ganesh Kulkarni ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 274 OF 2013
In

WRIT PETITION NO. 5201 OF 2012

Prabhakar Vasudev Karade ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 275 OF 2013
In
WRIT PETITION NO. 5361 OF 2012

Ashok Nanaso Kapase ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 276 OF 2013
In
WRIT PETITION NO. 5203 OF 2012

Sukumar Shamrao Tamgave ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 277 OF 2013
In
WRIT PETITION NO. 5380 OF 2012

Nemgonda Anna Patil ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 278 OF 2013
In
WRIT PETITION NO. 5370 OF 2012

Ravindra Bapusaheb Patil ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 279 OF 2013

In
WRIT PETITION NO. 5205 OF 2012

Neminath Bhupal Mandape ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 280 OF 2013
In
WRIT PETITION NO. 5204 OF 2012

Mangala Mohan Limbekar ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 281 OF 2013
In
WRIT PETITION NO. 5202 OF 2012

Mr. Prakash Dhanpal Gunde, Thr. Legal heirs
Smt. Akkatai Prakash Gunde And Anr. ...Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 282 OF 2013
In
WRIT PETITION NO. 5206 OF 2012

Vasant Bapu Magdum ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 283 OF 2013
In
WRIT PETITION NO. 5395 OF 2012

Arvind Appaso Patil ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 284 OF 2013
In
WRIT PETITION NO. 5378 OF 2012

Suryakant Dhondiram Bindage ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 286 OF 2013
In
WRIT PETITION NO. 4848 OF 2012

Prabhakar Bhaburao Kapase ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 287 OF 2013
In
WRIT PETITION NO. 4266 OF 2012

Annasaheb Laxman Kumbhar ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 288 OF 2013
In
WRIT PETITION NO. 5588 OF 2012

Mr. Annaso Appaso Chougule ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 289 OF 2013
In
WRIT PETITION NO. 5183 OF 2012

Sunil Purandar Adake ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 290 OF 2013
In
WRIT PETITION NO. 4851 OF 2012

Dada Kalgonda Patil ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 291 OF 2013
In
WRIT PETITION NO. 5451 OF 2012

Sukumar Kalu Chougule ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 292 OF 2013
In
WRIT PETITION NO. 5457 OF 2012

Rohini Bapusaheb Patil ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 293 OF 2013
In
WRIT PETITION NO. 4862 OF 2012

Shashikant Dattatraya Gokave ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 294 OF 2013
In
WRIT PETITION NO. 5394 OF 2012

Mahavir Bharma Aadanna ....Appellant

V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 295 OF 2013
In
WRIT PETITION NO. 5364 OF 2012

Prakash Appaso Parmaj ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 296 OF 2013
In
WRIT PETITION NO. 5192 OF 2012

Shakuntala Arun Patil ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 297 OF 2013
In
WRIT PETITION NO. 5365 OF 2012

Mahadev Appaso Bulle ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 300 OF 2013
In
WRIT PETITION NO. 5456 OF 2012

Kumar Shamu Kumbhoje ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 301 OF 2013
In
WRIT PETITION NO. 5453 OF 2012

Subhash Shivgonda Patil ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 302 OF 2013
In
WRIT PETITION NO. 5384 OF 2012

Jinpal Raghoba Terdale ....Appellant
V/S
Shamrao Vithal Co-opertaive Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 303 OF 2013
In
WRIT PETITION NO. 5452 OF 2012

Vasant Tatoba Bhokare ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 304 OF 2013
In
WRIT PETITION NO. 5388 OF 2012

Pravin Annappa Chougule ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 305 OF 2013
In
WRIT PETITION NO. 5362 OF 2012

Dhanyakumar Adinath Jain ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 306 OF 2013
In
WRIT PETITION NO. 5367 OF 2012

Bharat Nabhiraj Chinchwade ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 307 OF 2013
In
WRIT PETITION NO. 5455 OF 2012

Dhanyakumar Chandrakant Nille ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 308 OF 2013
In
WRIT PETITION NO. 5371 OF 2012

Kanchan Jaykumar Shendage ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

WITH
LETTERS PATENT APPEAL NO. 309 OF 2013
In
WRIT PETITION NO. 5375 OF 2012

Rajgonda Adgonda Patil ....Appellant
V/S
Shamrao Vithal Co-operative Bank Ltd. ....Respondent

Mr. A V Bukhari, Senior Advocate i/by Mr. P D Dalvi for the Appellants in all the Appeals.
Mr. Dhananjay J Bhanage a/w Mr. Mayur Dilip Joglekar for the Respondent in all the Appeals.

CORAM : R. M. SAVANT &
SMT. SADHANA S JADHAV, JJ.
Reserved on : 04th August 2017.
Pronounced on : 19th September 2017

<u>JUDGMENT</u> : [PER R M SAVANT, J]

1 The above Letters Patent Appeals have been filed challenging the judgment and order dated 25/07/2012 passed by a Learned Single Judge of this Court (Coram : Anoop V. Mohta J.), in the above group of Writ Petitions. Since the above Letters Patent Appeals involve common questions of fact and law, they can be conveniently heard together and disposed of.

2 By the consent of the Learned Counsel for the parties, the above Letters Patent Appeal No.285 of 2013 (Shrikant Bhujaballi Bahirshet v/s. Shamrao Vithal Co-operative Bank Ltd.) is treated as the lead matter and the facts in the said case would be referred to for the sake of convenience. The parties would be referred to as per their nomenclature appearing in the above Letters Patent Appeals.

FACTS :-

3 The Appellant herein was an employee of the Mahavir Co-operative Bank Ltd., Kolhapur (for brevity's sake herein after referred to as "MCBL") which was established under the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the MCS Act). The Appellant has superannuated in the year 2003 i.e. on 25/08/2003 and has been paid his retirement benefits on such superannuation. It is required to be noted that the said MCBL was not doing well and was in financial doldrums, on account of which it was merged into the Respondent Bank on 04/09/2006

pursuant to the order passed by the Commissioner of Co-operation under Section 110A of the said MCS Act. The Appellant herein after his superannuation filed the instant application under Section 33C(2) of the Industrial Disputes Act, 1947 (for short "The I.D. Act), claiming amounts on account of the difference in salary, difference in leave salary, House Rent Allowance, Increments, Dearness Allowance and Medical Allowance. The calculation sheet as to how the amounts claimed under each head was annexed to the said application filed by the Appellant under Section 33C(2). The amalgamation between the Mahavir Co-operative Bank Ltd. (MCBL) with the Respondent Bank was on certain terms and conditions. In the context of the present proceedings, the following clause of the Amalgamation Scheme is relevant and is reproduced herein under

> **"(2)...**
>
> shall , subject to the other provisions of this scheme, transferred to and become the properties and assets of the"TRANSFEREE BANK" and as from the said date, all the liabilities, duties and obligations of the "TRANSFEROR BANK", shall be and shall become the liabilities, duties and obligations of the "TRANSFEREE BANK", to the extent and in the manner provided hereafter."
>
> "If on the said date, any suit, appeal or other legal proceeding of whatever nature by or against the Transferor Bank is pending; the same shall not abate, or be discontinued or be in any way prejudicially affected, but shall, subject to the other provisions of this order, be prosecuted and enforced by or against the Transferee Bank."

4 In so far as the application filed by the Appellant under Section 33C(2) is concerned, it is required to be noted that it was founded on the fact that payment has been made under the aforesaid heads to 35 other employees who were similarly situated as the Appellant and the other Appellants. Hence the main thrust of the application in the matter of making the said claim under Section 33C(2) was on the basis that A similar claim was accepted by the then Mahavir Co-operative Bank Ltd. (MCBL) in respect of 35 other employees who were similarly situated as the Appellant. The application filed under Section 33C(2) was pending on the date when the amalgamation took place. The said application was opposed to on behalf of the MCBL prior to its amalgamation with the Respondent Bank by filing its Written Statement. After the amalgamation, the Respondent Bank opposed the said application inter-alia on the grounds mentioned in its Written Statement.

5 The learned Judge of the Labour Court on the basis of the pleadings of the parties framed issues revolving around the aspect of whether the application filed by the Applicant/Appellant was maintainable, and whether the Applicant/Appellant was entitled to claim the amounts as per the Schedule-with-interest.

In so far as the maintainability of the application is concerned, the learned Judge held that considering the nature of duties, and having regard to the tests laid down by the judgments of the Apex Court and this Court as to who could be said to be a workman, the Appellant can be said to be a workman as defined under Section 2(s) of the I.D. Act.

In so far as the entitlement of the Appellant to the amount claimed as per the Schedule-with-interest is concerned, the learned Judge answered the said issue in the negative.

6 The gist of the reasoning of the learned Judge was that the Appellant had failed to prove that he had a pre-existing right to claim the said amounts from the Respondent-Bank. The learned Judge further held that since the dispute was as regards the entitlement of the Appellant to the amounts under various heads which were frozen in the year 1995 and having regard to the intervening facts which disclose that the financial condition of the said Mahavir Co-operative Bank Ltd. Kolhapur (MBCL) was not good and it resultantly being amalgamated with the Respondent-Bank, the learned Judge held that the said issue as regards the entitlement of the Appellant could not be decided in a proceeding under Section 33C(2) of the I.D. Act which proceeding is in the nature of execution proceeding based on a pre-existing right. The learned Judge in the process of recording the said finding has held that the evidence adduced on behalf of the Appellant failed to show as to how and on what basis the Appellant has calculated the amount mentioned in the Schedule

to the said application. The learned Judge observed that the said Court had limited jurisdiction to compute the amount due and not for adjudication of the claim, and therefore, the application was not maintainable. The learned Judge further held that the Appellant could not rely upon the earlier judgment in I.D.A. Application Nos.34 to 63 and 75 to 79 of 1998 (case involving the 35 employees). The learned Judge was of the view that the said case was between the employees who had opted for VRS and the Mahavir Co-operative Bank Ltd. (MCBL) and that the MCBL did not seriously dispute the claim of the Applicants in the said cases. The learned Judge on the aforesaid basis accordingly rejected the application filed by the Appellant herein by the judgment and order dated 27/01/2012.

7 The Appellant herein aggrieved by the said judgment and order dated 27/01/2012 passed by the Labour Court along with other similarly situated persons, who had also filed the applications under Section 33C(2) of the I.D. Act filed Writ Petitions in this Court. In so far as the Appellant herein is concerned, he had filed Writ Petition No.5386 of 2012 challenging the said judgment and order dated 27/01/2012 passed by the learned Judge of the Labour Court, Kolhapur. The said Writ Petitions were heard finally at the admission stage by a learned Single Judge of this Court and by order dated 25/07/2012 the said Writ Petitions came to be dismissed. The learned Single Judge has whilst dismissing the said Writ Petitions confirmed the finding of the

Labour Court that the claim of the Appellant was not based on any pre-existing right, and that the claim of the Appellant in the said application could not be adjudicated in a proceeding filed under Section 33C(2) of the I.D. Act. The learned Single Judge however observed that it would be open for the Petitioners to file appropriate proceedings in accordance with law to recover their dues from the Respondent-Bank. As indicated above it is the said judgment and order dated 25/07/2012 passed by the learned Single Judge of this Court which is taken exception to by way of the above Letters Patent Appeal.

8 ***SUBMISSIONS OF THE LEARNED SENIOR COUNSEL APPEARING ON BEHALF OF THE APPELLANT SHRI A V BUKHARI :-***

A] That the learned Single Judge had erred in holding that the claim of the Appellant was not based on any pre-existing right.

B] That the learned Single Judge ought to have appreciated that the Appellant was claiming a benefit in respect of which computation was only required to be done. Reliance is sought to be placed on the judgment of the Apex Court reported in ***AIR 1964 SC 743*** in the matter of ***The Central Bank of India Ltd v/s. P. S. Rajagopalan etc.***

C] That the amount claimed by the Appellant is on the basis of the Award dated 30/09/1985 passed by the Industrial Tribunal in Reference (IC) No.18/1983 between The Bank Employees' Union, Kolhapur vs. Shri Mahavir Co-operative Bank Ltd. The said Award contained the service conditions which the employees of the said MCBL were entitled to and the Award inter-alia governs the Wage-scale, Dearness Allowance, House Rent Allowance and Medical Allowance with effect from 01/07/1983. Hence unless the said Award is replaced by another Settlement or Award, the efficacy of the Award continues and the employees are therefore entitled to the benefits as per the said Award. Reliance was sought to be placed on the judgment of the Apex Court reported in ***1980 LAB I. C. 1218*** in the matter of ***The Life Insurance Corporation of India v/s. D J Bahadur and others***

D] That the right of the Appellant is also based on the revision of pay scales carried out by the MCBL in September 1992 by passing a Resolution.

E] That both under the Award as well as the Resolution, the Appellant is entitled to the amount as mentioned in the Schedule to the application.

F] That the freezing of the Basic Wages and Dearness Allowance and other Allowances by the said MCBL was not done by following the procedure required for the same in the matter of giving a notice of change, as by freezing the said basic wages and the Dearness Allowance, House Rent Allowance and Medical Allowance, the service conditions of the employees of the said MCBL were sought to be changed to their detriment. The said change is without following the procedure for the same.

G] That the case of the Appellant is on par with the case of the 35 other employees who had taken VRS and who had made similar claim as the Appellant and whose claim was allowed by the Labour Court and thereafter confirmed right up to the Apex Court.

H] That the Labour Court as well as the learned Single Judge have erred in holding that the basis of the claim mentioned in the Schedule has not been stated by the Appellant.

I] That the case of the Appellant is clearly covered by Section 33C(2) of the I. D. Act as the claim of the Appellant cannot be disputed as only what was required to be done was the computation.

J] That the Award dated 30/09/1985 being not terminated, the employees would continue to be entitled to the benefit of the said Award, as the life of the Award is until termination or till the fresh settlement is arrived at.

K] That the Respondent Bank being the "Successor Bank", it is bound by the Award in terms of Section 94 of the Maharashtra Industrial Relations Act.

L] That the MCBL did not follow the procedure contemplated under the Maharashtra Industrial Relations Act to terminate the Settlement/Award by issuing notice in the Form-Q prescribed and therefore the MCBL is bound by the Award dated 30/09/1985.

M] That the Labour Court as well as the learned Single Judge failed to appreciate that the liability was accepted by the MCBL in so far as the Appellant and the other persons similarly situated like him are concerned as can be seen from the written statement filed by it.

9 ***SUBMISSIONS OF THE LEARNED COUNSEL APPEARING ON BEHALF OF THE RESPONDENT SHRI DHANANJAY BHANAGE:-***

Preliminary Objection

I] That the above Petition filed under Articles 226 and 227 of the Constitution of India is essentially filed under Article 227 of the Constitution of India challenging the judgment and order passed by the Labour Court in the Application filed under Section 33C(2) of the I. D. Act, and therefore, the above Letters Patent Appeal is not maintainable. Reliance is placed on the judgment of the Full Bench of this Court reported in ***AIR 2011 Bombay 84*** in the matter of ***M/s. Advani Oerlikon Ltd. v/s. Machindra Govind Makasare & ors.***

II] That the orders passed by the Labour Court and the learned Single Judge are well founded on the aspect of there being no pre-existing right in the Appellant to claim the amount which is claimed under Section 33C(2) of the I. D. Act. Reliance is placed on the judgment of the Apex Court reported in ***1974 (4) SCC 696*** in the matter of ***Central Inland Water Transport Corporation Limited v/s. Workmen*** and reported in ***(1995) 1 SCC 235*** in the matter of ***Municipal Corporation of Delhi v/s. Ganesh Razak and another***

III] That the Respondent Bank being the successor bank is not liable to make any payment to the Appellant or other persons similarly situated like him.

IV] That the right of the Appellant is not based on a pre-existing right and the same can be seen from the fact that the representative union i.e. Bank Employees Union, Kolhapur had filed Complaint (ULP) No.85 of 1998 alleging unfair labour practice against the MCBL, the subject matter of which complaint was also the amounts frozen by the MCBL, which Complaint came to be dismissed for default in the year 2008 i.e. after the merger of the said MCBL with the Respondent Bank had taken place.

V] That the said order dismissing the said Complaint for default was confirmed by the learned Single Judge of this Court. Hence in so far as the said claim of the Appellant which was sought to be espoused by the then representative union is concerned, the same came to be rejected and therefore the Appellant herein is not entitled to file the instant application under Section 33C(2) of the I. D. Act on the ground that he has a pre-existing right to claim the amount claimed in the said application.

VI] That the case based on the Award dated 30/09/1985 was never urged before the Labour Court or even the learned Single Judge but is urged for the first time in the above Letters Patent Appeal in support of his case that the claim is based on a pre-existing right.

VII] That the issue as to whether the Appellant would be entitled to the amount claimed cannot be adjudicated in a proceeding under Section 33C(2) of the I. D. Act as the entitlement of the Appellant was on the basis that the financial health of the MCBL improves The facts disclose that on account of precarious financial position of the said MCBL, an order of amalgamation of the said MCBL with the Respondent Bank was required to be passed by the Registrar of the Co-operative Societies under Section 110(A) of the Maharashtra Co-operative Societies Act.

VIII] That there is enough material on record to show the financial position of the said MCBL as also the accumulated losses of the said MCBL on the date of merger were to the tune of Rs.114 lakhs.

IX] That it is pertinent to note that the employees of the MCBL were represented by a representative union. The said representative union did not at any time give any notice of change for revision of wages or did not raise any general demands at any time after the Award dated 30/09/1985 and had therefore accepted the

Resolution passed by the MCBL and thereafter the freezing of the amounts.

X] That the steps to freeze Basic Wages and Dearness Allowance and the other Allowances had to be taken by the MCBL in view of the directions of the Reserve Bank of India so as to lessen the financial burden on account of salaries of the staff and thereby seeing to make the MCBL financially viable.

XI] That the Appellant herein having retired in the year 2003 and having accepted his retirement benefits without demur now is estopped from claiming the amount as mentioned in the Schedule to the application.

XII] That the order passed by the learned Single Judge does not suffer from any infirmity for this Court to exercise its jurisdiction under the Letters Patent.

10 **Reply of the learned counsel Shri A V Bukhari appearing for the Appellant to the preliminary objection raised by the learned counsel Shri Dhananjay Bhanage appearing for the Respondent:-**

That the above Letters Patent Appeal is maintainable as it is the case of the Appellant that the Labour Court has failed to exercise jurisdiction vested in it. The Letters Patent Appeal is also maintainable as the Writ Petition was filed under Articles 226 and 227 of the Constitution of India and as held in the judgment of the Full Bench of this Court in ***M/s. Advani Oerlikon Ltd.'s*** case (supra), the Appellant should not be deprived of the remedy by way of the above Letters Patent Appeal.

CONSIDERATION

11 The issue which is required to be addressed first is as regards the maintainability of the above Letters Patent Appeal. As indicated above, the above Letters Patent Appeal has been filed against the judgment and order dated 25/07/2012 passed by a learned Single Judge of this Court. In the context of the issue of maintainability of the above Letters Patent Appeal, it is required to be noted that in paragraph 19 of the above Writ Petition it has been averred that the Petitioner i.e. the Appellant herein is approaching this Court under Article 226 and Article 227 of the Constitution of India on the grounds mentioned in the said Writ Petition. In Ground (ii) the challenge to the impugned order passed by the Labour Court is on the ground that the Labour Court has refused to exercise the jurisdiction vested in it on perverse and erroneous grounds. Hence the averment in paragraph 19 makes it clear that the jurisdiction of this Court under Article 226 and Article 227 of the

Constitution of India was invoked, and by Ground (ii) the judgment and order passed by the Labour Court is sought to be assailed on the ground that the Labour Court has refused to exercise the jurisdiction vested in it on perverse and erroneous grounds. The maintainability of the above Writ Petition is sought to be questioned on behalf of the Respondent-Bank on the ground that since the judgment and order passed by the Labour Court is under challenge, the Writ Petition is essentially one filed under Article 227 of the Constitution of India as no relief is claimed under Article 226 of the Constitution of India. In the said context the principles laid down by the Full Bench of this Court in the judgment of ***M/s. Advani Oerlikon Ltd.'s*** case (supra) assume importance. The Full Bench in the said case was concerned with the issue whether an Appeal can lie under Clause 15 of the Letters Patent against a decision of a learned Single Judge in a Petition invoking Article 226 and Article 227 of the Constitution of India. The Full Bench in paragraph 20 has answered the reference by answering the questions which were in the order of reference. In the context of the present case the answer to question No.7 in paragraph 20 of the order of reference is material and the said paragraph 20 is reproduced herein under :-

> "20. Upon this discussion, we now proceed to answer the questions formulated in the order of reference:
>
> Re: 1 : It is not a correct proposition in law that this Court cannot correct jurisdictional errors or errors resulting in miscarriage of justice committed by authorities which are subordinate to it by invoking powers under Article 226 of the Constitution.

Re: 2 : <u>It is not a correct proposition in law that jurisdictional errors or errors resulting in miscarriage of justice committed by subordinate Courts/Tribunals can only be corrected by this Court in exercise of powers under Article 227 of the Constitution. The writ of certiorari can be issued under Article 226 of the Constitution where the subordinate Court or Tribunal commits an error of jurisdiction. Where the subordinate Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise jurisdiction, that error of jurisdiction can be corrected. Moreover when the Court or tribunal has acted illegally or improperly such as in breach of the principles of natural justice the writ of certiorari is available under Article 226.</u>

(emphasis supplied)

Re: 3 : Where the facts justify the invocation of either Article 226 or Article 227 of the Constitution to correct a jurisdictional error or an error resulting in a miscarriage of justice committed by authorities subordinate to this Court, there is no reason or justification to deprive a party of the right to invoke the constitutional remedy under Article 226 of the Constitution.

Re: 4 : It is open to the Court while dealing with a petition filed under Articles 226 and/or 227 of the Constitution or a Letters Patent Appeal under Clause 15 of the Letters Patent arising from the judgment in such a petition to determine whether the facts justify the party in filing the petition under Article 226 and/or 227 of the Constitution.

Re: 5 : The cause title, the averments and prayers in the petition can be taken into account while deciding whether the petition is one under Article 226 and/or 227 of the Constitution.

Re: 6 : If the petitioner elects to invoke Article 226 and/or 227 of the Constitution and the facts justify such invocation, a Letters Patent Appeal against the order of the Learned Single Judge would be maintainable even though the Single Judge has purported to exercise jurisdiction only under Article 227 of the Constitution. The fact that the Learned Single Judge has adverted only to the provisions of Article 227 of the Constitution would not bar the maintainability of such an appeal. The true test is whether the facts justify the invocation of Articles 226 and 227 and this has to be determined on the facts of each case having due regard to (i) the nature of the jurisdiction invoked; (ii) the averments contained in the petition; (iii) the reliefs sought; and (iv) the true nature of the principal order passed by the Single Judge. The true nature of the order passed by the Single Judge has to be determined on the basis of the principal character of the relief granted. The fact that an ancillary direction has been issued under Article 227 of the Constitution would not dilute the character of an order as one with reference to Article 226. What has to be ascertained is the true nature of the order passed by the Single Judge and not what provision is mentioned while exercising this power.

Re: 7 : <u>Where a petition is filed under Articles 226 and 227 of the Constitution and the facts justify the filing of such a petition, it is not lawful for the Court to hold that jurisdictional errors or errors resulting in a miscarriage of justice committed by the subordinate Courts or Tribunals can be corrected only by exercising powers under Article 227 (and that the mentioning of Article 226 is redundant), thus depriving the party of a right of appeal under Clause 15 of the Letters Patent.</u>

(emphasis supplied)

Re: 8 : When a petition is filed under Articles 226 and 227 of the Constitution and the facts justify the filing of such a petition, it is not open to the Court to hold that Article 226 need not have been invoked, on the ground that Article 227 is clothed with the power to grant the same relief thus depriving the party of a right to elect or

> choose a remedy.
>
> Re: 9 : In a situation where a petition is filed under Article 227 of the Constitution and judgment is rendered in favour of the Petitioner, recourse to an appeal under Clause 15 of the Letters Patent is not barred to the Respondent before the Single Judge merely on the ground that the petition was under Article 227. In State of Madhya Pradesh vs. Visan Kumar Shiv Charanlal (supra), the appeal before the Division Bench was filed by the Respondent to the proceedings before the Single Judge in a petition which had been instituted under Article 227. Accepting the submission that a nomenclature is of no consequence and it is the nature of the reliefs sought and the controversy involved which determine which Article is applicable, the Supreme Court held that the appeal before the Division Bench was maintainable. A similar position arose in the decision of the Supreme Court in M.M.T.C. vs. Commissioner of Commercial Tax (supra). The Division Bench of the High Court had held that since the petition before the Single Judge was under Article 227 of the Constitution, an appeal at the behest of the Respondent to the petition was not maintainable. The Supreme Court held that the High Court was not justified in holding that the Letters Patent Appeal was not maintainable since the High Court did not consider the nature of the controversy and the prayers involved in the Writ Petition."

In our view, the instant case would be covered by the said answer rendered to Questions Nos.2 and 7 whereby the Full Bench of this Court held that the jurisdictional errors or error resulting in a miscarriage of justice committed by the subordinate Courts or Tribunals can be corrected by exercising powers under Article 226 of the Constitution of India, and that it is not lawful to hold that jurisdictional errors or error resulting in a miscarriage of justice committed by the subordinate Courts or Tribunals can be corrected only by exercising powers under Article 227 of the Constitution of India, thus depriving the party of a right of appeal under Clause 15 of the Letters Patent. Having regard to the said authoritative pronouncement of the Full Bench of this Court, in our view, the issue raised on behalf of the Respondent Bank as regards maintainability of the above Letters Patent Appeal would have to be answered by holding that the above Letters Patent Appeal is maintainable.

12 Before proceeding to answer the issue as to whether the claim of the Appellant was based on an pre-existing right it would be necessary to refer to the judgments of the Apex Court on the issue of the nature of the jurisdiction under Section 33C(2) of the I.D. Act. In ***Central Inland Water Transport Corporation Limited's*** case (supra) it was held by the Apex Court that the proceeding under Section 33C(2) of the I.D. Act is a proceeding generally in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. The Apex Court further held that the said calculation or computation follows upon an existing right to the money or benefit, in view of it being previously adjudged, or, otherwise, duly provided for. The Apex Court thereafter distinguished between a suit and an execution proceeding. The

Apex Court held that in a suit, a claim for relief made by the plaintiff against the defendant involves an investigation as regards the plaintiff's right to the relief, the corresponding liability of the defendant, including whether the defendant is, at all, liable or not; and the extent of the defendant's liability. The Apex Court observed that the working out of such liability with a view to give relief is generally regarded as the function or an execution proceeding vis-a-vis the determination of the plaintiff's right to the relief and the corresponding liability of the defendant. The Apex Court held that the first two are the functions of a suit and not an execution proceeding. The Apex Court observed that since a proceeding under Section 33C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determination in respect of the first two questions normally is outside its scope. The Apex Court held that when a claim is made before the Labour Court under Section 33C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determination in respect of the first two aspects. The Apex Court held that a workman cannot put forward a claim in an application under Section 33C(2) in respect of a matter which is not based on a pre-existing right and which can appropriately be the subject-matter of an industrial dispute which requires a reference under Section 10 (1) of the I.D. Act. Paragraphs 12 and 13 of the said judgment are material and are reproduced herein under for ready reference :-

> 12 It is now well-settled that a proceeding under section 33(C)(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In (Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar & ors.(1968) 1 SCR 140 = (AIR 1968 SC 218) it was reiterated that proceedings under section 33(C)(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by workmen is in such cases in the Position of an executing court. It was also reiterated that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.
>
> 13 In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liabiliey, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under section 33(C)(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under section 33 (C)

> (2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'Incidental'. To call determinations (i) and (ii) 'Incidental' to an execution proceeding would be a per- version, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under section 33(C)(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions- say to an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation. In such cases determinations (i) and (ii) are not 'Incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held in State Bank of Bikaner and Jaipur v. R. L. Khandelwal (1968) 2 Lab LJ 589 (SC), that a workman cannot put forward a claim in an application under section 33(C)(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject-matter of an industrial dispute which requires a reference under section 10 of the Act.”

In ***Ganesh Razak***'s case (supra) the Apex Court referred to its earlier judgments including the judgment in ***Central Inland Water Transport Corporation Limited***'s case (supra). The Apex Court held that the Labour Court under Section 33C(2) of the I.D. Act has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis, in exercise of its power under Section 33C (2) of the Act. The Apex Court further held that it is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. Paragraph 12 of the said judgment is material and is produced herein under for ready reference :-

> The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of the proceeding under Section 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation of enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

13 It would now be apposite to refer to the application filed by the Appellant under Section 33C(2) of the I.D. Act. The said application has been filed by the Appellant on 14/02/2006. In the said application it is stated by the Appellant that he was working as a clerk with MCBL since October 1970.

He was confirmed in service on 01/08/1971. He was promoted as a Junior Officer and was working as such in the legal department at the time of his superannuation on 25/08/2003. It was averred in the said application that the MCBL had illegally stopped the Annual Increments, Dearness Allowance and other benefits like House Rent Allowance and Medical Allowance from May 1995 on account of the poor financial condition of the bank. It was further averred that the employees were assured that dues would be paid when the financial position of the bank becomes sound. It was further averred that the said amounts were frozen from the year 1995 till the retirement of the Appellant on 25/08/2003. It was further averred in the said application that the MCBL has merged with the Respondent Bank during pendency of the application and therefore, the Respondent Bank is a legal entity which came into being on account of the said amalgamation. It was further averred that in terms of the scheme of amalgamation the Respondent Bank has taken overall contingent liabilities of the MCBL. It was further averred that all pending proceedings were to be continued against the Respondent Bank and that the implementation of the outcome of the said proceedings would be the responsibility of the Respondent Bank. It was further averred that the Appellant had applied for the said outstanding amounts being paid to him as the Appellant had legal right to the said amounts. It was further averred that in respect of some other employees, the issue was decided in favour of the said employees. It was lastly averred that in spite of making request from time to time, the Respondent Bank has not heeded the said request and in fact has even not replied to the notices issued on behalf of the Appellant. It was therefore prayed that appropriate orders were required to be passed against the Respondent Bank.

14 A reading of the application filed under Section 33C(2) therefore discloses that in the application the thrust of the case of the Appellant is as regards the liability of the Respondent Bank to pay the outstanding amounts on account of freezing of the Annual Increments, Dearness Allowance etc. by the MCBL since 1995. The case of the Appellant was also based on the fact that in respect of other employees the issue has been decided in favour of the said employees by the Apex Court. Hence in so far as the application is concerned, the same is not founded on any pre-existing right based on the Award dated 30/09/1985 or the Resolution passed by the MCBL in September 1992. The application filed by the Appellant under Section 33C(2) of the I. D. Act is conspicuous of any such averment.

15 Against the judgment and order passed by the Labour Court dated 27/01/2012, the Appellant filed a Writ Petition in this Court being Writ Petition No.5386 of 2012 . In the said Writ Petition it was averred by the Appellant in paragraph 11 to the following effect (Excerpt) :-

> "The Petitioner was a similarly placed employees. He too was enjoying the benefit of the rise decided and

given by the Mahavir Bank since 1992. The said benefit was also denied to the Petitioner on the ground of financial crunch and was also assured payment, extension of said benefit upon improvement of financial health of the Bank. Even after retirement when the Petitioner did not receive the benefit, the Petitioner filed aforementioned Application before the Labour Court, Kolhapur, under section 33C(2) of the Industrial Disputes Act, 1947. The Applicant, in the annexure to the Application, stated that he is a retired employee and that he is entitled to the release of benefits like dearness, allowance, annual increments, bonus, medical aid etc. illegally withheld by the Bank."

In the grounds of challenge in the said Petition, Ground Nos.(iv) and (viii) are required to be noted and read thus :-

> "(iv) That the Ld. Labour Court failed to appreciate that the basis of Petitioner's claim was the resolution passed by the Mahavir Bank and it was nobody's case that the said resolution was cancelled, revoked or annulled. The said resolution granted right to the Petitioner to make claims on the basis of the decision therein.
>
> (viii) That the Ld. Labour Court failed to appreciate the provisions contained in section 33C(2) of the Industrial Disputes Act were not confined to benefits arising out of any settlement, agreement or award. The claim under the term "any money or benefit due" under section 33C(2) is wider than the claim under any settlement, agreement or award under section 33C(1) of the Industrial Disputes Act. The Ld. Labour Court failed to appreciate that such a claim for money or benefit can arise out of the decision or inaction of the management. The Ld. Labour Court ought to have appreciated that the Petitioner was entitled to receive annual increment every year as per the resolution and hence it was pre-existing right for Petitioner. So also, in case of the dearness allowance and other benefits, the Petitioner had such pre-existing right to claim the arrears thereof, which amount was withheld by the

management."

Hence a reading of the said Writ Petition filed by the Appellant discloses that the case based on the Award dated 30/09/1985 passed in Reference (IC) No.18/1983 was not pleaded in the said Writ Petition and the pre-existing right was therefore claimed on the basis of the Resolution passed by the MCBL in September 1992. Hence it is for the first time in the above Letters Patent Appeal that the learned counsel for the Appellant has sought to base the pre-existing rights by relying upon the Award dated 30/09/1985 passed in the said Reference (IC) No.18/1983.

16 In so far as MCBL is concerned, it is required to be noted that the general demands raised on behalf of the employees by the representative union was a subject of adjudication before the Industrial Tribunal in Reference I.C. No.18 of 1983 (Bank Employees Union, Kolhapur vs. The Mahavir Co-operative Bank Ltd.). The Industrial Tribunal has passed the Award in the said Reference covering various aspects like Wages, Dearness Allowance, House Rent Allowance, Medical Allowance etc. The said Award therefore governed the service conditions of the employees in the MCBL. As indicated above, the Board of Directors of MCBL in September 1992 passed a Resolution revising the wage scale of the employees. It is pertinent to note that though there was a representative union and though the Award was passed by the Industrial Tribunal in the year 1985 governing the service conditions of the employees,

the representative union had not raised any fresh general demands. As can be seen, the MCBL had revised the wages of the employees in September 1992 at the request of the employees. It is further required to be noted that the financial position of the said MCBL had taken a nosedive and accumulated losses in the year 1994 was to the tune of Rs.114 lakhs. It resulted in the Reserve Bank of India which has got the regulatory powers under Section 35 of the Banking Regulation Act issuing directions to MCBL to cut down its expenditure on account of staff. This has ultimately resulted in the MCBL freezing the Annual Increments, Dearness Allowance, House Rent Allowance, Medical Allowance etc. from May 1995 and it was represented to the employees that the employees could claim the said amounts after the financial condition of the MCBL improves. It is required to be noted that the condition of MCBL did not improve and further deteriorated resulting in an Administrator being appointed in the year 1996 by the Registrar of Co-operative Societies, Maharashtra State. The Administrator with a view to streamline the affairs of the said MCBL came out with VRS in the year 1997. One of the conditions of the VRS was that the employees would be entitled to frozen Annual Increments, Dearness Allowance, House Rent Allowance and Medical Allowance on improvement of the financial condition of the said MCBL. Hence the position of the MCBL in so far as financial condition is concerned was also reflected in the conditions in VRS which has been referred to earlier.

17 The representative union filed Complaint (ULP) No.85 of 1998. The reliefs sought in the said Complaint were as follows :-

> “10 It is, therefore, prayed that this Hon'ble Court may be pleased to :-
>
> (a) declare that the Respondents above named have engaged in and are engaging in the Unfair Labour Practices squarely covered by item Nos.1, 2, 4 and 5 of Schedule II and Item Nos.5, 9 and 10 of Schedule IV of the Act;
>
> (b) direct the Respondent to cease and desist from indulging in the said Unfair Labour Practices;
>
> (c) direct the Respondents to pay arrears of the Dearness Allowance linked with Cost of Living Index as per the Award to its employees and which is illegally frozen;
>
> (d) direct the Respondents to pay the second installment of arrears of the House Rent Allowance agreed to be paid in October 1996.
>
> (e) direct the Respondent to release the annual increments of the employees illegally withheld;
>
> (f) direct the Respondents not to effect reduction in the salary and wages of the employees up to 40% unilaterally and without observance due procedure prescribed under the Bombay Industrial Relations Act, 1946 and further refund forthwith the amounts so deduced;
>
> (g) direct the Respondent Bank to withdraw illegal changes effected purportedly under guise of “employees” contributory responsibility.”

The said Complaint was pending when the amalgamation between the MCBL and the Respondent Bank took place on 04/09/2006. The said complaint ultimately came to be dismissed for default by the Industrial Tribunal. The said Complainant i.e. the representative union filed an application for restoration which application also came to be dismissed resulting a Writ Petition being filed in this Court being Writ Petition No.6941 of 2010 which also came to be dismissed by a learned Single Judge of this Court by order dated 06/12/2010. It seems that the matter was thereafter not carried further and therefore the dismissal of the said Complaint became final. It is required to be noted that the subject matter of the Complaint was the deduction of 40% from the wages with effect from 01/03/1997 and the claim of arrears of the Dearness Allowance, House Rent Allowance and the relief of Annual Increments. The dismissal of the said Complaint and the confirmation of the same by the Industrial Tribunal by not allowing the application for restoration in our view impinges upon the factum of maintainability of the application filed by the Appellant under Section 33C(2) of the I.D. Act.

18 As indicated above, the Wage-scale, Dearness Allowance, House Rent Allowance, and the Medical Allowance were frozen in May 1995 on account of the precarious financial condition of the said MCBL. Though there was a representative union existing in the said MCBL, the representative union did not take raise any fresh general demands or making a demand in respect of

the arrears under the said heads. The representative union though filed a Complaint did not take the said Complaint to its logical conclusion resulting in the said Complaint being dismissed for non-prosecution. Implicit in the filing of the Complaint under the MRTU and PULP Act 1971 by the representative union was the acceptance of the fact that there was a dispute as regards the entitlement to the said amounts. Hence it could not be said that the claim made in the application by the Appellant was based on a pre-existing right which was steeped in the Award dated 30/09/1985 or the Resolution passed by the MCBL in September 1992. It is required to be noted that the Appellant accepts the fact that the amounts towards the increase in Wage-scale, Dearness Allowance, House Rent Allowance and Medical Allowance were frozen in May 1995 with an assurance or promise that the said amounts would be released when the financial condition of the MCBL improves. The said fact is also reflected in the VRS which was announced in the year 1997. The question that would arise is therefore whether the Respondent Bank would be bound by the said Award dated 30/09/1985 or the Resolution passed by the MCBL in September 1992. The said question has to be considered in the context of the fact that before the Labour Court as well as before the learned Single Judge in this Court no case was advanced on the basis of the said Settlement/Award dated 30/09/1985 or the Resolution passed by the MCBL in September 1992. Hence whether the Respondent Bank which is a transferee bank is liable to comply with the Settlement/Award dated 30/09/1985 also impinges upon the issue as to whether the claim of the Appellant is based on a pre-existing right. The question that also begs an answer is whether the Respondent Bank is liable to pay the amount towards difference in the Wage-Scale, Dearness Allowance, House Rent Allowance and Medical Allowance when the financial condition of the said MCBL did not improve, as a result of which the MCBL had to be merged with the Respondent Bank. The said issue therefore also impinges upon whether the claim of the Appellant is based on any existing right.

19 Now coming to the judgments cited on behalf of the Appellant i.e. the judgment in ***The Central Bank of India Ltd***'s case (supra). In the said case the Apex Court has held that the remedy by way of Section 33C which was introduced in the Act 1956 is a speedy remedy to enforce the existing individual rights of the workmen. The said provision i.e. Section 33C of the I. D. Act illustrates the cases in which individual wormen can enforce their rights without having to take recourse to Section 10(1) of the Act, or without having to depend upon their Union to espouse their cause. The Apex Court has however held that construction to be put on Section 33C should not be so broad as to bring within the scope of Section 33C cases which would fall under Section 10(1) of the I. D. Act. The Apex Court also sounded a note of caution by observing that though in determining the scope of Section 33C we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which, fall under Section 10(1) of the Act for

instance cannot be brought within the scope of Section 34C.

The Apex Court in ***The Life Insurance Corporation of India***'s case (supra) has held that after the expiry of the specific period contractually or statutorily fixed as the period of operation of the award or settlement, the same does not become nonest but continues to be binding. The Apex Court further held that until a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. The relevant paragraph of the said judgment is paragraph 33 which is reproduced herein under :-

> "33 The core question that first falls for consideration is as to whether the Settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become nonest but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given under s. 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, Law abhors a vacuum and even on the notice of termination under s. 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law

> at least for 30 years as precedents of the High Courts and of this court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of s.19 a conclusion diametrically opposite of the objective, intendment and effect of the Section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end-order in society can it commit functional harakiri by leaving a conflict situation to lawless void ?"

In our view, the said judgments would not aid the Appellant in so far as the maintainability of the application under Section 33C(2) of the I. D. Act is concerned as also to contend that the claim made by the Appellant is based on a pre-existing right. In instant case as indicated above there was a representative union operating in the MCBL. However, the said representative union had never raised fresh demands or had called upon the MCBL and thereafter the Respondent Bank to comply with the Award. As indicated above, it has come on record that the MCBL in September 1992 had passed a resolution granting increase in wages to the employees. Thereafter in May 1995 the amounts under the said heads were frozen with a representation made that the employees would be entitled to the said amounts after the financial position of the MCBL improves. Thereafter the MCBL had paid the wages after deducting 40% from the amounts payable. This had prompted the representative union to file the Complaint in question being Complaint (ULP) No.85 of 1998 which was filed under the provisions of the MRTU and PULP Act, 1971 and which was ultimately dismissed for default in the year 2008.

20 The aforesaid facts therefore indicate that the representative union or the employees can be said to have acquiesced in the factum of freezing of the amounts under the said 4 heads and had also thereafter accepted the fact that the said amounts would be payable only in the event of the financial condition of the MCBL improving. In our view, therefore, in the facts as afore-stated, the judgments (supra) cited on behalf of the Appellant would be of no avail to the Appellant.

21 The financial condition of the MCBL at the relevant time is required to be noted. The Reserved Bank of India in the Inspection Report of the year 2005 had recorded the gross NPA of the MCBL at Rs.345.28 and that the bank had suffered an operating loss of Rs.83.65 lakhs during the said financial year and accumulated losses were increased from 1061.73 lakhs for the year 2003-04 to Rs.1154.34 lakhs for the year 2004-05. During the said period i.e. 2004-05 the percentage of staff costs to total income had increased from 15.6% to 21.3%. It has also come in the evidence that the bank was virtually in a precarious condition on 31/03/2005 when the viability of the bank was -0.8% and there was no surplus income to pay anything for operating

expenses including salaries. Hence the financial position of the MCBL can be said to be bad since 1994 till it was merged with the Respondent Bank.

22 The Appellant has laid much store on the adjudication in respect of the 35 employees of the erstwhile MCBL which adjudication had also taken place under Section 33C(2) of the I.D. Act. In so far as the said 35 employees are concerned, they had opted for the VRS which was announced in the year 1997 by the said MCBL. As indicated in the earlier part of this Judgment, one of the clauses in the said VRS was that the employee who opts for the said scheme would be entitled to the Wage-Scale, Annual Increments, Dearness Allowance, House Rent Allowance, Medical Allowance, in case the financial condition of the MCBL improves. The Applications under Section 33C(2) of the I. D. Act filed by the said 35 employees were therefore filed relying upon the said VRS and the condition mentioned therein. The said proceedings were I.D.A. Application Nos. 34 to 63 and 75 to 79 of 1998 filed by the said 35 employees in their individual capacity. It seems that in the said proceedings the MCBL had accepted its liability to pay the amounts which were frozen and it is on the said basis that the said I.D.A. Applications came to be allowed by the learned Judge, Labour Court, Kolhapur by the judgment and order dated 17/11/2000. Hence the defining aspect in so far as the cases of the said 35 employees was the acceptance of the case of the said Applicants by the MCBL. Against the judgment and order dated 17/11/2000 the MCBL filed a Writ

Petition in this Court being Writ Petition No.7216 of 2000. The said Writ Petition came to be dismissed by a learned Single Judge of this Court by order dated 22/02/2001. The MCBL thereafter filed Letters Patent Appeal No.160 of 2001 before a Division Bench of this Court. The said Letters Patent Appeal came to be dismissed by the Division Bench by order dated 22/10/2001 on the ground that the same was not maintainable. Against the said order, the MCBL filed SLP in the Apex Court which latter on came to be numbered as Civil Appeal (S) No.6577 of 2002. As by that time merger had taken place, the Respondent herein i.e. Shamrao Vithal Co-operative Bank Ltd. filed an I A for being permitted to intervene in the said Civil Appeal. The said Civil Appeal came to be dismissed by the Apex Court by order dated 01/05/2008, however, liberty was granted to the Respondent Bank to challenge the original order, if not already challenged. The Respondent Bank thereafter filed Review Petition in this Court seeking review of the order passed by a learned Single Judge dated 22/02/2001. Since the said Review Petition was suffering from delay, a Civil Application was filed for condonation of delay being Civil Application No.2558 of 2008. The learned Single Judge did not find the reasons mentioned in the said Civil Application for seeking condonation of delay of 7 years and 110 days as setting out sufficient cause for condonation of delay and accordingly dismissed the said Civil Application. Hence as a result the order passed by a learned Single Judge confirming the order dated 17/11/2000 by the Labour Court in the said I.D.A. Application Nos. 34 to 63 and 75 to 79 of

1998 filed by the said 35 employees came to be final and binding. Hence in the case of the 35 employees the MCBL had accepted its liability to pay the amounts which were frozen. The Respondent Bank i.e. the Shamrao Vithal Co-operative Bank was not party to the proceedings till it filed an application for intervention in the Apex Court after the amalgamation of the MCBL with it. Hence the Respondent Bank had no opportunity to defend the applications which were filed by the 35 employees. In so far as the present Appellant and the other persons similarly situated as him are concerned, it is required to be noted that the Respondent Bank had filed its written statement and opposed the applications filed by the Appellant and other persons similarly situated as him under Section 33C(2) of the I. D. Act. As indicated above, the Labour Court has recorded a finding that the cases of the said 35 employees were decided on the facts as prevailing in the said cases wherein the MCBL had accepted its liability, whereas in the instant case the Respondent Bank after merger has opposed the claims made by the Appellant and the other persons similarly situated as him. The Labour Court has also observed that each case has to be decided on its facts. In our view, therefore, the Appellant herein cannot draw support from the adjudication which has taken place in respect of the 35 employees, as the fact whether the Appellant can claim parity with the 35 employees would also impact the case of the Appellant that the claim in the said application filed by him under Section 33C(2) is based on a pre-existing right.

23 At the cost of repetition, the findings recorded by the learned Judge of the Labour Court would have to be revisited. The learned Judge has recorded finding to the effect that the amount claimed by the Appellant is not based on any pre-existing right. The Learned Judge has further held that reliance could not be placed on the cases of the said 35 employees by the Appellants as the Respondent Bank had raised several objections regarding the entitlement of the Appellants to the said amount. The Learned Judge has further held that the Appellants claim based on a pre-existing right is denied and seriously disputed by the Respondent Bank and on account of the same serious issue of law and facts which requires adjudication by an appropriate forum. The learned Judge has also held that the evidence adduced on behalf of the Appellant failed to show as to how and on what basis the Appellant has calculated the amount mentioned in the Scheme. The Learned Judge has further referred to the precarious financial condition of the MCBL. The Learned Judge has concluded by observing that the Appellants having accepted the payment at the time of retirement without any protest, it is not open for the Appellant to claim the amounts which has been claimed in the Application filed under Section 33C(2).

24 Now coming to the Judgment and Order of the Learned Single Judge of this Court, the Learned Single Judge as indicated above has recorded

a finding that the amount as claimed was never determined or crystallized. The Learned Single Judge of this Court has further observed that the financial conditions of the MCBL (Mahavir Bank) never improved. The MCBL though agreed had contested the matters and therefore at no time the amount claimed by the Applicants was accepted by the Banks. The Learned Single Judge further observed that the complex and disputed facts cannot be decided in proceedings under Section 33C(2). The Learned Single Judge has concluded that the amount claimed was never determined and finalized and therefore such a claim cannot be adjudicated in the summary proceedings under Section 33C(2) of the ID Act.

25 This judgment would not be complete without dealing with the observations made by the Learned Single Judge in paragraph 18 of the impugned judgment. The said paragraph 18 reads thus :

> 18. Admittedly, all the liabilities, duties and obligations of the transferor Bank (The Mahavit Bank) has been taken by the transferee Bank i.e. the Respondent Bank.

In so far as the said aforesaid observations of the Learned Single Judge are concerned, it is required to be noted that the Labour Court did not answer the issue of the liability of the Respondent Bank on the ground that the said issue did not survive for consideration as it had come to the conclusion that the claim of the Appellants was not based on any pre-existing right and therefore the Application under Section 33C(2) was not maintainable. It is also required to be noted that the Respondent Bank had opposed the application filed by the Appellants inter alia on the grounds mentioned in its Written Statement which included the denial of its liability to pay the amount claimed by the Appellants. In the Writ Petition also no such issue was raised and contentions advanced as regards the existence or non existence of the pre-existing right in the Appellants. Hence there could not be any admission on the part of the Respondent Bank as observed by the Learned Single Judge. Hence the observations made in paragraph 18 can be said to be stray observations made by the Learned Single Judge. The said issue according to us would also be an issue involving facts and law which cannot be decided in a proceeding under Section 33C(2) and can be a issue which can be at large in appropriate proceedings.

26 Having heard the Learned Counsel for the parties at length and having perused the Judgments and Orders passed by the Labour Court as well as the Learned Single Judge of this Court, we do not find any infirmity or illegality in the order passed by the Learned Single Judge for us to exercise the Letters Patent Jurisdiction. The above Letters Patent Appeal No.285 of 2013 is accordingly dismissed.

27 For the reasons recorded in the above lead matter, all the

above Letters Patent Appeals being Nos.250 of 2013, 253 of 2013 to 284 of 2013, 286 of 2013 to 297 of 2013, 300 of 2013 to 309 of 2013 would have to be dismissed and are accordingly dismissed. However, it is clarified that all the Appellants would be entitled to follow the course of action which is proposed by the learned Single Judge in the impugned Judgment and Order of filing appropriate proceedings. If any such proceedings are filed, needless to state that the same would be tried on their own merits and in accordance with law.

[SMT. SADHANA S JADHAV, J] **[R.M.SAVANT, J]**