IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1052 OF 2014

M/s. Chatrapati Traders and Ors. ...Petitioners

Versus

The Akola Janata Commercial Co-op Bank,
Ltd. Akola ...Respondent

ALONG WITH
WRIT PETITION NO. 1079 OF 2015

Rameshwar Nathuji Badhe ...Petitioner

Versus

The Akola Janata Commercial Co-op Bank,
Ltd. Akola and Others ...Respondents

***

Mr. M.G. Sarda for the Petitioners in both petitions.
Mr. R.L. Kharpe, for Respondent in WP/1052/2014 and for Respondent No. 1 in WP/1079/2015.

***

CORAM : PRASANNA B. VARALE, J.
DATE : MARCH 07, 2017

ORDER:

1. Heard learned Counsels appearing for the respective parties.

2. It would not be out of place to state here that in both these petitions an identical/common issue is involved, namely, an order passed by the learned 3rd Joint Civil Judge Senior Division, Akola in R.D. No.

257/2010 dated 17^{th} January, 2014 and order passed by learned 2^{nd} Joint Civil Judge Senior Division, Akola in R.D. No. 338/2010 dated 27^{th} November 2014, whereby the objection application filed on behalf of the petitioners herein are rejected, as such, the petitions are tagged together and accordingly are taken up for hearing and final disposal by consent of learned Counsel appearing for the respective parties.

3. Brief facts giving rise to the petitions can be summarized as follows.

A] The petitioners are the members of the Akola Janata Commercial Co-op Bank, Ltd. Akola in Writ Petition No. 1052/2014. The petitioners nos. 1 to 3 along with other persons faced a dispute raised by the Respondent - The Akola Janata Commercial Co-op Bank, Ltd. Akola (for short "**said Bank**") in regards to the claim for a debt outstanding Rs. 30,88,325.55/- including interest and other charges due to it as on 31.10.2004. The Respondent bank had sanctioned a secure cash credit limit of Rs. 25,00,000/- against security of immovable property of petitioners. The other party to the dispute is Opponent No. 6 i.e. Ku. Rupali Rambhau Khedkar was a non member mortgagor.

B] The Respondent -. bank against the security of immovable property of the petitioners and opponent no. 6 i.e. non member mortgagor sanctioned the said cash credit for a period of 35 months on certain terms and conditions as per the loan documents. Agreed rate of interest was @ 16.5% p.a. with quarterly rest. It was also agreed, in case of breach of any loan rules or conditions petitioners will be liable to pay additional rate of interest @ 3% p.a. than the agreed rate of interest. Petitioners have accepted the terms and conditions and executed the necessary loan documents on 09.11.2001 along with other documents i.e. demand promissory note, letter of acceptance, SCC agreement, letter of lien and set-off, letter of continuity, letter of assurance, letter of verification, letter of declaration by proprietor and letter of guarantee. Further to secure the loan, petitioners and opponent no. 6 have jointly executed registered mortgage deed on 12.11.2001 for that purpose opponent no. 6 has executed a special power of attorney dated 06.11.2001 and authorize one Chandrashekhar R. Khedkar to execute the mortgage deed on her behalf. On completion and execution of the loan documents the limit was released and petitioner no. 1 was allowed to operate the loan limit account and availed loan facility.

C] It is the case of the respondent – bank that in spite of accepting the conditions petitioners have committed breach of agreement, as such, respondent – bank issued several demand reminders so as to recover loan amount. As there was no response, ultimately a legal notice was also issued on 02.01.2004 to deposit the loan amount. Even there was no response to the legal notice and the petitioners failed to make the payment as demanded and the respondent – bank by availing a legal remedy decided to refer the matter to arbitrator and accordingly, the dispute was filed claiming Rs. 26,00,891.55/- towards the principal sum plus Rs. 4,87,434/- towards unapplied interest due on 31.10.2004 total amounting to Rs. 30,88,325.55/- and prayed to pass an award in its favour and against the petitioners together with interest thereon @ 19.5% p.a. being compounded quarterly from 01.11.2004 till realization of amount with costs of dispute.

D] Though, the notices was issued to the petitioners on filing the dispute before the tribunal the Respondent – bank had submitted all the necessary documents before learned Arbitrator. Petitioners only filed written statement but neither appeared before the tribunal nor adduced any evidence before the tribunal.

E] Similarly, in Writ Petition No. 1079/2015 the Respondent – bank had sanctioned a secure cash credit limit of Rs. 20,00,000/- against security of immovable property of the petitioner and the petitioners in Writ Petition No. 1052/2014, namely, M/s. Chatrapati Traders and M/s. Shree Ganesh Traders were guarantors to the secure cash credit loan limit and agreed rate of interest was @ 16.5% p.a. with quarterly rest. It was further agreed that in case of breach of any loan rules or conditions applicable to the said limit, the petitioners will liable to pay additional interest @ 3% p.a. than the agreed rate of interest.

F] Petitioners have accepted the terms and conditions and accordingly executed necessary loan documents, namely, promissory note, letter of acceptance, SCC agreement, letter of lien and set off, letter of continuity, letter of assurance, letter of verification and letter of guarantee. To secure the loan, petitioner nos. 1, 4, 5 and 6 have also executed registered mortgage deed on 29.01.2002. On execution of the loan documents limit was released and the petitioner was allowed to operate the loan limit account and availed loan facility. However, the petitioner failed to follow the rules and conditions and committed breach of the loan agreement, the Respondent – bank issued several demand and reminders called upon the petitioner. As the petitioner failed to show any response to the notices, ultimately legal notice was issued on 01.01.2004 to deposit the loan amount of Rs. 20,74,425/-.

In spite of receipt of the said notice, petitioner made no attempts to make payment as demanded against loan, as such, by availing legal remedy respondent – bank decided to refer the matter to the competent forum, namely, learned arbitrator, accordingly, dispute was filed before learned Arbitrator and the respondent – bank claimed Rs. 20,75,132/- towards the principal sum plus Rs. 4,44,082/- towards unapplied interest due on 31.10.2004 total amounting to Rs. 25,19,214/- and prayed to pass an award in its favour and against petitioner together with interest thereon @ 19.5% p.a. being compounded quarterly from 01.11.2004 till realization of amount with costs of dispute.

G] Learned Arbitrator passed awards on 05^{th} July, 2005 and 24^{th}

August, 2005 respectively which reads as follows:

AWARDA

a] The opponent no. 1,2,3,4 & 5 do pay to the disputant bank a sum of Rs. 30,81,850.55 (Rs. Thirty Lac eighty one thousand eight hundred fifty & paise fifty five) only (i.e. claim amount Rs. 30,88,325.55 less Rs. 6,475 deposited during case proceedings) with further interest on the said amount @ 18.5% p.a. from 01/11/2004 till realization.

b] The charge of the Disputant bank on the immovable property described in the Mortgage Deed dt. 12/11/2001 be continued till realization of amount due.

c] The opponents do pay Rs. 33,980/- (Rs. Thirty three thousand nine hundred eighty) only to the disputant bank towards costs of Arbitral proceedings including Arbitration Fees as per costs of award annexed, as Annexure-A hereto and shall bear their own.

d] The liability of the opponents shall be joint & several.

Place: Akola *sd/-*
Date : 05/07/2005 *R.K. Deshpande,*
Arbitrator

AWARD.

a] The opponent nos. 1 to 5 do pay to the disputant bank a sum of Rs. 25,14,164/- (Rs. Twenty five lac fourteen thousand one hundred sixty four) only (i.e. claim amount Rs. 25,19,214/- less amount credited Rs. 5,050/- during the case proceedings) with further interest on the said amount @ 18.5% p.a. from 01.11.2004 till realization.

b] The charge of the disputant bank of the immovable property described in the Mortgage Deed dt. 29.01.2002 be continued till realization of amount due.

c] The opponents do pay Rs. 32,980/- (Rs. Thirty two thousand nine hundred eighty) only to the disputant bank towards costs of arbitral proceedings including Arbitration Fee as per costs of Award annexed, as Annexure-A hereto and shall bear their own.

d] The liability of the opponents shall be joint & several.

Place: Akola *sd/-*
Date : 24.08.2005 *R.K. Deshpande,*
Arbitrator

H] As the petitioners failed to comply the arbitral award the respondent – bank approached the learned Civil Judge Senior Division, Akola by filing an execution proceedings. Petitioners have filed applications cum objection. Their applications initially filed were rejected by learned Civil Judge. Again, the petitioners have filed the applications and by impugned orders the applications are rejected. Hence, this petitions.

4. Learned Counsel Mr. Sarda appearing for the petitioners vehemently submitted that the orders impugned in these petitions are unsustainable as the order passed by the learned Court below is beyond its jurisdiction. Learned Counsel further submitted that the Respondent – bank i.e. decree holder could not have brought mortgage property putting it to sale under an execution proceedings. It is also submitted that the Respondent – bank ought to have filed a civil suit so as to enforce the mortgage and could not have used the arbitral award as an basis for execution proceedings. It was the submissions of learned Counsel for petitioners that the proceedings initiated by the Respondent – Bank is contrary to the provisions of Civil Procedure Code and more particularly contrary to the Rule 14 of Order 34 of Civil Procedure Code.

5. In support of his submissions, learned Counsel appearing for

the Petitioners placed heavy reliance on the judgment of the Apex Court in the matter of *Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd*[1]. It was also submitted by learned Counsel that if the course adopted by the respondent – bank i.e. putting mortgage property on sale for execution of an arbitral award by committing breach of the provisions of Civil Procedure Code the same would cause an irreparable loss to the petitioners. Learned Counsel for petitioners invited my attention to the contentions raised in the objections. Hence, learned Counsel appearing for the petitioners prayed for allowing the petitions by quashing and setting aside the orders impugned in the petitions.

6. Per contra, learned Counsel Mr. Kharpe appearing for the Respondent – Bank vehemently submitted before this Court that the petitions are wholly untenable. It is submitted that petitioners who are the defaulters have accepted the terms and conditions and petitioners are well aware of the terms and conditions while obtaining cash credit and loan facility and have accepted all these terms and conditions of the documents executed between the parties. It was then submitted by learned Counsel that as the petitioners failed to repay the loan amount

1 2012(3) Bom.C.R. 865(S.C.)

the Respondent – bank had issued notices and reminders, as there was no response to notice and demands the Respondent – Bank issued legal notice. Even a legal notices was not responded, as such, the Respondent – Bank by availing legal remedy filed a dispute.

7. Mr. Kharpe then submitted that the Respondent – Bank is a multi state co-op bank and as such it is governed by the Multi State Co-operative Societies Act, 2002 (for short "**said Act**"). Mr. Kharpe then by inviting my attention to Section 84(4) of the said Act submitted that as per the provisions of the act a special forum of statutory arbitration has been created by legislature to adjudicate and to decide the dispute about outstanding and due amount of the loan in between the members and the bank. Mr. Kharpe then submitted that it is not in dispute that these petitioners were the members of the bank and there was an outstanding amount of loan against these petitioners, as such, by taking recourse to the provisions of Section 84 of the said Act Respondent – bank filed the dispute before the learned Arbitrator. It was also submitted by learned Counsel that as per provisions of the Act i.e. Section 84(4) of the Said Act the arbitrator appointed by the Central Registrar is having right,

powers and jurisdiction to decide the dispute in respect of claim of due amount of loan and interest.

8. Mr. Kharpe further submitted that as the jurisdiction of Civil Court is ousted the Respondent – bank could not have filed any civil suit for recovery of outstanding loan amount and interest and the Respondent – bank by availing appropriate remedy filed dispute before learned Arbitrator. Mr. Kharpe then invited my attention to the copies of the awards passed by the learned Arbitrator.

Mr. Kharpe then vehemently submitted that the Respondent – Bank had submitted all the necessary documents before the learned Arbitrator and the learned Arbitrator had issued notices calling upon the petitioners to appear before the learned Arbitrator and to submit their say. Learned Counsel then submitted that the petitioners had every opportunity to lead evidence before the learned Arbitrator or counter the evidence submitted on behalf of the Respondent – Bank but the petitioners neither appeared before the Arbitrator nor submitted any evidence in respect of their claim before the learned Arbitrator and except filing a written statement took no steps to seriously contest the dispute.

9. Learned Counsel Mr. Kharpe invited my attention to the specific observations of the learned Arbitrator and it reads as,

> *"all the opponents absence, no cross order was passed, case was fixed for evidence of the opponents, disputant present through A.O., all opponents absent, case fixed for arguments and case was fixed on scheduled date for final order".*

It is also submitted that the ground raised in the objection cum application was not at all raised before the learned Arbitrator. Learned Counsel then submitted that petitioners have suppressed material facts and approached before learned Civil Judge Senior Division i.e. filing of an earlier objection and rejection of the said. Mr. Kharpe then submitted that filing of second application at the instance of petitioners itself was not maintainable and act of the petitioners was hit by principal of *res judicata*. It is submitted that on this count alone the petitions be dismissed. Learned Counsel Mr. Kharpe by placing reliance on the judgment of learned Single Judge of this Court in the matter of *Saba Chemicals and Ors. Vs. Siddhartha Bhattacharya and Anr*[2] and

2 2015 (4) Bom.C.R. 682

Ashta Lokmanya Nagari Sahakari Patsanstha Maryadit Vs. Ganesh Co-op. Spinning Mill Ltd[3] submitted that the judgment relied on by the petitioners in the matter of Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd.(supra) is of no help to the petitioners.

10. On going through the material placed on record, I find considerable merit in the submissions of learned Counsel Mr. Kharpe appearing for the Respondent – Bank.

11. As the necessary facts are referred to in the earlier part of the order, it may not be out of place to repeat those facts. Suffice it to say that petitioners who were contesting parties i.e. opponents before learned Arbitrator have failed to cause appearance before the learned Arbitrator in spite of notices issued to them and duly served. Mr. Kharpe was justified in submitting before this Court that before the learned Arbitrator the petitioners only raised the ground of inability of the arbitrator to act as an arbitrator being a retired employee of the bank. As this objection was dealt in detail by the learned Arbitrator, it may not be out of place to refer to the observations of the learned Arbitrator which

3 2008 (2) AIR Bom R 525

reads as follows:

> *At para 8 of W.S. opponent no. 1 has submitted that the proceedings of present dispute before the present Arbitrator are not tenable as the present Arbitrator being an ex-employee of the disputant bank is receiving benefits from the disputant bank in terms of pension and therefore, there is every possibility that he will not get proper justice and hence present dispute may be transferred to any other Arbitrator. In this regard, it has to be noted that the present Arbitrator did not get any benefits including pension from the disputant bank. Further, the appointment of present Arbitrator is statutory appointment u/s 84(4) of the Multi State Co-operative Societies Act, 2002 and the fact, that the present Arbitrator is a retired officer of the disputant bank has been disclosed to the appointing authority prior to the appointment as Arbitrator. Thus present Arbitrator has exclusive jurisdiction to entertain and try the present dispute.*

12. On perusal of documents it revealed that the petitioners have filed objection cum application in the year 2011. Then application was pending for considerable period on account of the adjournment sought for by the applicants themselves. The learned 2nd Joint Civil Judge Senior

Division in the order dated 25th July, 2014 observed thus:

> *Objector …..*
>
> *From the various adjournment application of Judgment debtor, it appears that he has obtained various adjournments. All these adjournments were objected, but finally objector could not remained present. Even for settling the terms of proclamation by issuance of proclamation.*
>
> *Therefore, I conclude from the conduct of Judgment debtor that he is resisting without any reason.*
>
> *…..*

13. The documents placed on record further shows that though the petitioners filed an application for setting aside the order dated 25.07.2014 and the application was opposed by filing say on 05.09.2014 at the instance of respondent – bank, the petitioners had filed second objection cum application.

It may not be out of place to state that in the order impugned in the present petitions the learned Civil Judge refers to the objection raised by the respondent – bank that the applications are barred by principal of *res judicata*. Learned Counsel Mr. Kharpe was also justified in making submissions before this Court that the petitioners have not raised any challenge to the arbitral award and the same is in existence and as such, is executable by the Civil Court. It is admitted that the award is not challenged by the petitioners. Mr. Kharpe was also justified in making submissions before this Court that the award passed in the year 2005 and the petitioners against whom the amount is outstanding and due against loan are only prolonging the matter on one ground or the other.

14. There is also considerable merit in the submissions of learned Counsel Mr. Kharpe that the petitioners who were the contesting party before the Arbitrator and having every opportunity to contest the proceedings by leading evidence to appear before the learned Arbitrator in spite of issuing notices and are now raising certain untenable technical grounds. Mr. Kharpe was also justified in placing reliance on the judgments of this Court to submit that the judgment of the Apex Court in the matter of Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd (supra) is of no help to the petitioners. In the matter of Saba Chemicals and Ors. Vs. Siddhartha Bhattacharya and Anr (supra) the

judgment of the Apex Court was also referred to.

It may be useful for our purposes to refer to certain observations made in the judgment of Saba Chemicals and Ors. (supra) as under:

> *20. The next submission of the learned counsel for the petitioners is that the learned arbitrator could not have granted any relief in favour of the respondents inter alia praying for enforcement of mortgage, redemption of mortgage and for sale of mortgaged properties of the petitioner no.1 and the said reliefs claimed by the respondents were without jurisdiction. He submits that the relief in respect of the enforcement of the mortgage cannot be adjudicated upon by an arbitrator and in view of Order XXXIV of the Code of Civil Procedure, 1908, the proceedings in rem can be tried only by a Civil Court.*
>
> …..
>
> …..
>
> …..
>
> *39. In so far as the submission of the learned counsel for the petitioners that the learned arbitrator did not have jurisdiction to decide the prayers for redemption of mortgage and sale of mortgaged*

properties is concerned, to decide this issue raised by the learned counsel for the petitioners, it would be appropriate to refer to the some of the provisions of the Multi-State Co-operative Societies Act, 2002.

41. Section 3(n) of the said Act provides for definition of a member which reads thus :

"3. Definitions :

(n) "member" means a person joining in the application for the registration of a multi-state cooperative society and includes a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye laws."

Section 3(p) of the said Act provides for definition of Multi-State Co- operative Society which reads thus :

"3. Definitions :

(p) "multi-state cooperative society" means a society registered or deemed to be registered under this Act and includes a national cooperative society and a Federal cooperative.

42. Under Section 4 of the said Act, the Central Government is empowered to appoint a person to be the Central Registrar of the Co-operative Societies and may appoint such other persons as it may think fit to assist the Central Registrar. Section 10 of the said Act provides that every multi-state co-operative society may make its *bye-laws consistent with the provisions of the said Act and the rules made thereunder. Section 25 of the said Act provides as to who may become members of the said multi-state co-operative societies and also provides for their duties, rights and liabilities.*

43. Section 84 of the said Act of 2002 provides for reference of disputes touching the constitution, management or business of Multi-State Co-operative Society. It provides that a dispute shall be referred to arbitration and settled by an arbitrator to be appointed by the Central Registrar. Section 85 of the said Act provides for limitation in filing dispute. Section 84 of the said Act reads thus :-

"84. Reference of disputes - (1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-state cooperative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-state cooperative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past members and persons claiming through a member, past member or deceased member and the multi-state cooperative society, its board or any officer, agent or employee of the multi-state cooperative society or liquidator, past or present, or

(c) between the multi-state cooperative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-state cooperative society, or

(d) between the multi-state cooperative society and any other multi-state cooperative society, between a multi-state cooperative society and liquidator of another multi-state cooperative society or between the liquidator of one multi- state cooperative society and the liquidator of another multi-state cooperative society, such dispute shall be referred to arbitration.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-state cooperative society, namely:-

(a) a claim by the multi-state cooperative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or

not;

(b) a claim by a surety against the principal debtor where the multi-state cooperative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a multi- state cooperative society.

(3) If any question arises whether a dispute referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-state cooperative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court.

(4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996."

44. Section 86 and 87 provides for winding up of Multi-State Co-operative Societies. Section 90 provides for powers of liquidator. Section 93 provides for power of Central Registrar to cancel registration of the Multi-State Co- operative Society. Section 96 provides for powers of the arbitrator to direct conditional attachment of the property or a part thereof of a party to the reference to arbitration as he deems necessary. Section 96(2) provides that attachment under sub-section (1) shall be executed by a Civil Court having jurisdiction in the same way as an attachment order passed by itself and shall have the same effect as such order. Section 96(2) of the said Act reads thus :-

"96. Attachment before award :

(1) ....

(2) The attachment under sub-section (1) shall be executed by a civil court having jurisdiction in the same way as an attachment order passed by itself and shall have the same effect as such order."

48. A perusal of Section 84 of the said Act clearly indicates that the said provision is non-obstante provision and will apply notwithstanding anything contained in any other law for time being in force, if any dispute touching the constitution, management or business of Multi-State Co-operative Society arises *among members, past members and persons claiming through members, past members and deceased members, or between a member, past member and persons claiming through a member, past member or deceased member and the multi-State co-operative society, such dispute shall be referred to arbitration. The said provision is mandatory and not discretionary. Under Section 84(2)(a), a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not shall be deemed to be a dispute touching the constitution, management or business of a multi-State co-operative society.*

49. It is thus clear that the recovery of any debt by multi-state co-operative society from person mentioned therein would be a dispute touching the constitution, management or business of a multi-State co-operative society. A perusal of Section 84 provided ig under Chapter IX of the said Act clearly contemplates that the learned arbitrator has power and jurisdiction to entertain the prayers for recovery of all debts whether it is secured or unsecured within the provision of Section 84(2)(a) of the said Act. In my view, since the provisions of the said Act are self contained and a special mechanism is created *under the Statute by making procedure of the reference of disputes to the arbitration mandatory, no Civil Court will have jurisdiction to entertain such proceedings which has to be referred to arbitration under the said provisions. In my view, the learned arbitrator has thus jurisdiction to entertain even the prayer for recovery under the mortgage by multi-state co-operative society and such dispute is deemed to be a dispute touching the constitution, management or business of a multi-State co-operative society.*

50. A conjoint reading of Sections 96 and 97 also makes it clear that the arbitrator is empowered to pass an order of attachment before declaring an award which order of attachment shall be executed by a Civil Court having jurisdiction in the same way as an attachment order passed by Civil Court itself. The arbitrator is also authorised to be a Civil Court for certain purposes when exercising powers under the said Act for recovery of any amount by the attachment and sale or by sale without attachment of any property or when passing any orders on any application made to him for such recovery or for taking a step-in-aid of such recovery. It is thus clear that powers of an arbitrator who can be appointed by the Central Registrar under powers conferred upon the Central Registrar under the provisions of the said Act *has wide power prescribed under the said Act of 2002 which is a self-contained Code. Under Section 117 of the said Act, 2002, there is bar of jurisdiction of Courts except the dispute referred in the said provision.*

55. A perusal of the judgment of Supreme Court in case of Booz Allen and Hamilton Inc. (supra) indicates that the Supreme Court in the said judgment was considering the application under section 8 of the Arbitration and Conciliation Act, 1996 in a civil suit. The parties to the said proceedings had entered into an arbitration agreement voluntarily. In that context, Supreme Court held that the arbitral tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. It is held that every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of arbitral tribunals is excluded either expressly or by necessary implication. It is held that adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. In the said proceedings, the parties were not governed by any provisions regarding statutory arbitration.

56. In my view, in case of statutory arbitration, whether parties have independently entered into any arbitration agreement or not is not relevant. In view of section 84 of the said Act of 2002, once the parties to a dispute would fall under the category provided under section 84(1) (a) and (b) and if the dispute relates to the category of disputes prescribed therein, parties have no option but to refer their dispute to arbitration of the arbitrator to be appointed by the Central Registrar or other person under the provisions of the said Act. The parties even do not have any option to choose or nominate a particular arbitrator under the provisions of the said Act. In my view the reliefs sought by the Multi-state Co-operative Bank for enforcement of the securities for the purpose of recovering the debts would exclusively fall within the jurisdiction of the learned arbitrator under section 84 and thus expressly or impliedly barred from the purview of the jurisdiction of the civil court.

17. Considering all the above aspects, I am of the opinion that the petitions are devoid of any merit and deserve to be dismissed and accordingly, same are dismissed. Rule stands discharged.

(PRASANNA B. VARALE, J.)