

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.5527 of 2010

Victor Christiyan, S/o Late Shri Daud Christiyan, Age about 65 years,
R/o Christian Colony, Rajatalab, Raipur (C.G.)

---- Petitioner

Versus

1. Authorized Officer, Laxmi Mahila Nagrik Bank Maryadit, Raipur (C.G.)
2. Smt. Ethelk Bandhey, W/o Shri Shiv Dayal Bandhey
3. Shri Prakash Bandhey, S/o Shri Shiv Dayal Bandhey,

Both R/o L.R.G. – 7, C.G. Housing Board Colony, Tatibandh, Raipur
(C.G.)
4. Shri Clinton, S/o Late Shri Christopher Christiyan, R/o L.I.C. Colony,
Jabalpur (M.P.)
5. Shri Christ Anand Christiyan, R/o 7 Panchsheel Nagar, Katora Talab,
Raipur (C.G.)
6. Shri Vimal Christiyan, R/o 29/335 Christian Colony, Civil Lines, Raja
Talab, Raipur (C.G.)
7. Narendra Harchandani, aged about 55 years, S/o Shri Prabhudas
Harchandani, R/o G-12, Anupam Nagar, Raipur, Tahsil & District
Raipur.

---- Respondents

For Petitioner:	Mr. G.D. Vaswani, Advocate.
For Respondent No.1:	None present.
For Respondents No.2 and 3: -	Mr. H.B. Agrawal, Senior Advocate with Mr. Pankaj Agrawal, Advocate.
For Respondents No.4 to 6: -	Mr. Rakesh Thakur, Advocate.
For Respondent No.7:	Mr. Malay Kumar Bhaduri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/01/2018

1. The short question that emanates for consideration is whether the
provisions of the Securitisation and Reconstruction of Financial Assets

and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') would apply to respondent No.1 / Co-operative Bank constituted under the provisions of the Chhattisgarh Co-operative Societies Act, 1960.

2. The essential facts shorn of all paraphernalia requisite to answer the aforesaid question are as under: -

2.1) The Authorised Officer of Laxmi Mahila Nagrik Sahakari Bank Maryadit enforced security interest under the provisions of Section 13 of the SARFAESI Act and took symbolic possession of secured asset and thereafter with aid and assistance of the District Magistrate, Raipur, by its order dated 25-5-2009, under Section 14 of the SARFAESI Act, took physical possession of secured asset on 3-9-2010 and auction sale was made on 13-9-2002 in favour of respondent No.7 and sale certificate was issued in favour of respondent No.7 – auction purchaser on the same day. Feeling aggrieved and dissatisfied with the order passed by the District Magistrate and invoking the provisions of the SARFAESI Act, the petitioner claiming to be the co-owner along with respondents No.2 and 3, who had taken financial assistance from respondent No.1 Bank, has filed this writ petition primarily on the ground that the respondent No.1 Bank is a co-operative society engaged in the business of banking is not a banking company as defined in Section 5(c) of the Banking Regulation Act, 1949 (for short, 'the Act of 1949') and therefore the provisions of the SARFAESI Act would not apply and the entire proceeding initiated by respondent No.1 is illegal and bad in law.

2.2) The respondent No.1 Bank has filed its return stating inter alia

that the entire proceeding under the SARFAESI Act had already been completed and as such, the auction sale has already been made and exercise is complete and even possession of secured asset has already been delivered to respondent No.7.

2.3) Respondents No.2 and 3 have filed return supporting the petition and the stand taken by the petitioner in this writ petition.

2.4) Respondent No.7 has opposed the writ petition stating inter alia that the action of the respondent Bank in exercising power under the SARFAESI Act and holding the auction sale and selling the property in favour of respondent No.7, is strictly in accordance with law, therefore, the writ petition deserves to be dismissed.

3. Mr. G.D. Vaswani, learned counsel for the petitioner, would submit that the respondent No.1 Bank being a co-operative society engaged in the business of banking is not a banking company as defined in Section 5(c) of the Act of 1949, therefore, the SARFAESI Act will not be applicable to the property in question and as such, the respondent Bank was totally incompetent to proceed under the provisions of the SARFAESI Act for recovery of the disputed amount and therefore the physical possession taken and the auction sale made in favour of respondent No.7 deserve to be set aside. Mr. Vaswani would strongly rely upon the decision of the Supreme Court in the matter of **Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd. and others**¹.

4. None has appeared for respondent No.1. No representation is made despite service of notice.

5. Mr. H.B. Agrawal, learned Senior Advocate appearing for respondents

¹ (2007) 6 SCC 236

No.2 and 3, would support the petitioner.

6. Mr. Malay Kumar Bhaduri, learned counsel appearing for respondent No.7, would submit that notification under Section 2(1)(c)(v) of the SARFAESI Act has been issued by the Central Government on 28-1-2003 and by the said notification, Co-operative Banks have been included within the meaning of Section 5(c) of the Act of 1949 and therefore respondent No.1 being a Co-operative Bank was empowered to proceed under the SARFAESI Act and rightly proceeded so and thus, the auction sale has rightly been made. Mr. Bhaduri relied upon the decision of the Madras High Court in the matter of Raj Kumar Khemka v. Union of India and others².

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.
8. The SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights, and for matters connected therewith or incidental thereto. The definition of “bank” is provided in Section 2(1)(c) of the SARFAESI Act, which states as under: -

“(c) “bank” means—

- (i) a banking company; or
- (ii) a corresponding new bank; or
- (iii) the State Bank of India; or
- (iv) a subsidiary bank; or
- (iv-a) a multi-State co-operative bank; or

² AIR 2009 Madras 143

(v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;”

9. Likewise, “banking company” has been defined under Section 2(1)(d) of the SARFAESI Act which states as under: -

“(d) “banking company” shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);”

10. Thereafter, in exercise of the powers conferred under item (v) of clause (c) of sub-section (1) of Section 2 of the SARFAESI, the Central Government has issued a notification on 28-1-2003 specifying “Co-operative Banks” as defined in clause (cci) of Section 5 of the Banking Regulation Act, 1949, as 'bank' for the purpose of the SARFAESI Act, which states as under: -

“NOTIFICATION No. SO 105(E), DATED 28-1-2003 In exercise of the powers conferred under item (v) of Clause (c) of Sub-section (1) of Section 2 of the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby specifies “Co-operative Bank” as defined in Clause (cci) of Section 5 of Banking Regulation Act, 1949 (19 of 1949) as 'bank' for the purpose of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).”

11. By Amendment Act No.58 of 1968, Part V has been inserted in the Banking Regulation Act, 1949 which is the application of the Act to Co-operative Banks. Clause (cci) has been inserted in Section 5 of the Act of 1949. Section 56 of the Act of 1949 reads as follows: -

“56. Act to apply to co-operative societies subject to modifications.—The provisions of this Act, as in force for

the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to banking companies subject to the following modifications, namely:—

.....

.....

(c) in section 5,—

(i) after clause (cc), the following clauses shall be inserted, namely:—

(cci) “Co-operative bank' means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

.....

.....”

12. A conjoint reading of Section 2(1)(c)(v) of the SARFAESI Act, Section 56(c)(i) read with Section 5 of the Act of 1949 and the notification dated 28-1-2003, it is quite vivid that the SARFAESI Act would be applicable to the Co-operative Banks which includes Central Co-operative Bank and Primary Co-operative Bank.
13. At this stage, the submission of Mr. Vaswani, learned counsel for the petitioner, would be that since respondent No.1 is a co-operative society engaged in the business of banking, it is not a banking company as defined under Section 5(c) of the Act of 1949, therefore, the SARFAESI Act would not be applicable to respondent No.1 which is a co-operative society relying upon the decision rendered by the Supreme Court in **Greater Bombay Coop. Bank Ltd.** (supra).
14. **Greater Bombay Coop. Bank Ltd.** (supra) was a case in which action was taken by the co-operative bank under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993

(for short, 'the RDB Act') and not under the provisions of the SARFAESI Act. However, Their Lordships of the Supreme Court discussed the relevant provisions of the Act of 1949, the SARFAESI Act, the RDB Act and other laws and held as under: -

“97. For the reasons stated above and adopting pervasive and meaningful interpretation of the provisions of the relevant statutes and Entries 43, 44 and 45 of List I and Entry 32 of List II of the Seventh Schedule of the Constitution, we answer the reference as under:-

"Cooperative banks" established under the Maharashtra Co-operative Societies Act, 1960 (the MCS Act, 1960), the Andhra Pradesh Cooperative Societies Act, 1964 [the APCS Act, 1964), and the [Multi-State Cooperative Societies Act](#), 2002 (the MSCS Act, 2002) transacting the business of banking, do not fall within the meaning of "banking company" as defined in [Section 5\(c\)](#) of the [Banking Regulation Act](#), 1949 (the BR Act). Therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the RDB Act) by invoking the *doctrine of incorporation* are not applicable to the recovery of dues by the co-operatives from their members.

98. The field of cooperative societies cannot be said to have been covered by the Central Legislation by reference to Entry 45, List I of the Seventh Schedule of the Constitution. Cooperative banks constituted under the [Co-operative Societies Acts](#) enacted by the respective States would be covered by cooperative societies under Entry 32 of List II of the Seventh Schedule of the Constitution of India.”

15. From the aforesaid proposition of law, it is quite vivid that the co-operative bank is not a banking company, therefore, it cannot recover its dues or debts by taking recourse to the provisions of the RDB Act.

16. Now, the question is whether the said proposition of law can be pressed into service to hold that the provisions of the SARFAESI Act would not be applicable even after the issuance of notification dated 28-1-2003 by the Central Government under Section 2(1)(c)(v) of the SARFAESI Act applying the SARFAESI Act to the Co-operative Bank.
17. Mr. Vaswani has thoroughly relied upon paras 41 and 42 of the said judgment {**Greater Bombay Coop. Bank Ltd.** (supra)}. It would be profitable to reproduce the said paragraphs which state as under: -

“41. Parliament had enacted the Securitisation and Reconstruction of Financial Assets and **Enforcement of Security Interest Act**, 2002 (“the Securitisation Act”) which shall be deemed to have come into force on 21-6-2002. In Section 2(d) of the Securitisation Act same meaning is given to the words “banking company” as is assigned to it in clause (e) of Section 5 of the BR Act. Again the definition of “banking company” was lifted from the BR Act but while defining “bank”, Parliament gave five meanings to it under **Section 2(c)** and one of which is “banking company”. The Central Government is authorised by **Section 2(c)(v)** of the Act to specify any other bank for the purpose of the Act. In exercise of this power, the Central Government by notification dated 28-1-2003, has specified "co-operative bank" as defined in **Section 5(cci)** of the BR Act as a "bank" by lifting the definition of “co-operative bank” and “primary co-operative bank” respectively from **Section 56**, Clauses 5(cci) and (ccv) of Part V. Parliament has thus consistently made the meaning of “banking company” clear beyond doubt to mean “a company engaged in banking, and not a co-operative society engaged in banking” and in Act 23 of 1965, while amending the BR Act, it did not change the definition in **Section 5(c)** or even in Section 5(d) to include cooperative banks; on the

other hand, it added a separate definition of “co-operative bank” in [Section 5\(cci\)](#) and “primary co-operative bank” in [Section 5\(ccv\)](#) of Section 56 of Part V of the BR Act. Parliament while enacting the Securitisation Act created a residuary power in [Section 2\(c\)\(v\)](#) to specify any other bank as a bank for the purpose of that Act and in fact did specify “co operative banks” by notification dated 28-1-2003.

42. The context of the interpretation clause plainly excludes the effect of a reference to banking company being construed as reference to a cooperative bank for three reasons: firstly, [Section 5](#) is an interpretation clause; secondly, substitution of “cooperative bank” for “banking company” in the definition in [Section 5\(c\)](#) would result in an absurdity because then [Section 5\(c\)](#) would read thus: "cooperative bank" means any company, which transacts the business of banking in India; thirdly, [Section 56\(c\)](#) does define "cooperative bank" separately by expressly deleting/inserting clause (cci) in [Section 5](#). Parliament in its wisdom had not altered or modified the definition of “banking company” in [Section 5\(c\)](#) of the BR Act by Act 23 of 1965.”

18. The fact remains that in exercise of power conferred under Section 2(1)(c)(v) of the SARFAESI Act, the Central Government has issued notification dated 28-1-2003 specifying “co-operative bank” as defined in clause (cci) of Section 5 of the Act of 1949 as “bank” for the purpose of SARFAESI Act. Therefore, the said judgment relied upon by Mr. Vaswani, which relates to the RDB Act, would not at all be applicable to the action to be initiated under the SARFAESI Act by the Co-operative Bank / respondent No.1.

19. At this stage, the decision of a Division Bench of the Bombay High

Court in the matter of M/s. Khaja Industries and etc. v. State of Maharashtra and another etc.³ may be profitably noticed herein in which Their Lordships while considering the similar issue as to whether the SARFAESI Act applies to co-operative banks including those constituted under the Maharashtra Co-operative Societies Act, Their Lordships answered the question holding that the provisions of the SARFAESI would be applicable to Co-operative Banks, as under:-

“It is clear therefore that on a conjoint reading of Section 2(1)(c)(v) of the Securitisation Act, the Notification dated 28-1-2003 and Section 56(c)(i) read with Section 5 of the B.R. Act, that the Securitisation Act also applies to cooperative banks. The learned Counsel appearing on behalf of the respondents were unable to indicate how on a plain reading of the aforesaid provisions, cooperative banks do not fall within the ambit of the said Act. They however relied upon the judgment of the Supreme Court in the case of Greater Bombay Cooperative Bank Ltd. v. United Yarn Tex. Pvt. Ltd. and Ors. AIR 2007 SCW 232. By this judgment, the Supreme Court overruled a judgment of the Full Bench of the Bombay High Court, to which one of us (S.J. Vazifdar, J.) was a party. ”

20. Their Lordships also clearly held that the SARFAESI Act expressly includes within its ambit co-operative banks, whereas the RDB Act does not include and concluded as under: -

“The judgment of the Supreme Court therefore, far from being of any assistance to the petitioners is, in fact, against them. While the Securitisation Act expressly includes within its ambit co-operative banks, the RDB Act does not. The RDB Act and the Securitisation Act by definition are applicable to "banks". Both Acts define

³ 2007(6) MhLJ 712 : AIR 2008 (NOC) 44 (Bom.)

banks to mean inter-alia "a banking company" (Section 2(c)(i) of the Securitisation Act and Section 2(d)(i) of the RDB Act). Both Acts provide that "banking company" shall have the meaning assigned to it in Clause (c) of Section 5 of the Banking Regulation Act, 1949. [section 2(d) of the Securitisation Act and Section 2(e) of the RDB Act]. However, what is important to note is that the RDB Act does not have a provision similar to Section 2(c)(v) of the Securitisation Act.

In the circumstances, the first contention is rejected.

Re : 11. The Securitisation Act, if applicable to Co-operative Banks, is arbitrary and violative of Article 14 of the Constitution of India as it deprives the borrowers such as the petitioners the right to challenge the action of the banks under Section 13. ”

21. Similarly, following the principles of law laid down in M/s. Khaja Industries (supra), a Division Bench of the Madhya Pradesh High Court in the matter of Hafiz Zakir Hussain v. Akola Janta Commercial Co-operative Bank Ltd.⁴ laid down similar proposition. Dipak Misra, J, as then His Lordship was, speaking for the Division Bench while sustaining the order passed by the learned Single Judge holding that the provisions of the SARFAESI Act would be applicable to Co-operative Banks, held as under: -

“13. In view of the aforesaid premises, we are of the considered opinion that the view expressed in Manoj Tarwala (supra) is not applicable as it was not a case relating to 2002 Act but with regard to forum under the 1993 Act and the status of the bank. In the case at hand the power has been exercised by the Central Government under the 2002 Act and the Apex Court has clearly stated that the Central Government is authorised by Section 2(c)

4 2008(2) M.P.L.J. 433

(v) of the Act to specify any other bank for the purpose of the said Act.”

22. Likewise, the Madras High Court speaking through S.J. Mukhopadhyaya, J, as then His Lordship was, in **Raj Kumar Khemka** (supra) opined in no uncertain terms that co-operative bank has jurisdiction to proceed under Section 13 of the SARFAESI Act in view of the notification dated 28-1-2003 read with Section 2(1)(c)(v) of the SARFAESI Act and observed as under: -

“20. From the aforesaid findings of the Supreme Court (at paragraph 40), it will be evident that the modifications given in Clause (a) of Section 56 of B.R. Act, are to make regulatory measures provided by the B.R. Act to apply to Co-operative Banks also, in bringing the Co-operative Banks under the discipline of the Reserve Bank of India and other authorities. A Co-operative Bank shall be construed as a 'banking company' in terms of Section 56 of the B.R. Act. This is because, the various provisions of regulating banking business were to be made applicable to Co-operative Banks also.

As per the said Section 56 of the B.R. Act, though it may not be bring the Co-operative Banks within the meaning of the 'banking company', but that does not preclude the Central Government to bring a Co-operative Bank under the definition of "banking" as distinct from the 'banking company'.

21. Under Entry 32 of List II (State List) of Seventh Schedule of the Constitution of India, though the "State" has been empowered with regard to "Co-operative Societies", but under Entry 43 read with Entry 45 of List I (Union List) of Seventh Schedule of the Constitution of India, the Central Government has the power of regulation in making laws with regard to "banking", distinct from "banking business". Therefore, it cannot be

asserted that the Central Government had no power to introduce [Section 2\(c\)\(v\)](#) of the SARFAESI Act, nor the Notification contained in S.O.No.105(E), dated 28.1.2003, can be held to be unconstitutional.

We accordingly hold that 'the respondent-Co-operative Bank' has jurisdiction to proceed under [Section 13](#) of the SARFAESI Act, in view of Notification in S.O.No.105(E), dated 28.1.2003, read with [Section 2\(c\)\(v\)](#) of the SARFAESI Act and the first issue is decided accordingly.”

23. In view of the aforesaid legal discussion, I am unhesitatingly and unreservedly of the opinion that respondent No.1 Laxmi Mahila Nagrik Sahakari Bank Maryadit, which is a Co-operative Bank, is a bank covered within the meaning of Section 2(1)(c)(v) of the SARFAESI Act read with notification dated 28-1-2003 and therefore the provisions of the SARFAESI Act would be applicable to respondent No.1 which is a Co-operative Bank constituted under the provisions of the Chhattisgarh Co-operative Societies Act, 1960.

24. As a fallout and consequence of aforesaid discussion, I do not find any illegality or any jurisdictional error in the action of the respondent Bank in proceeding under the provisions of the SARFAESI Act and taking possession and putting the property in auction and selling in favour of respondent No.5. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.5527 of 2010

Victor Christiyan

Versus

Authorized Officer, Laxmi Mahila Nagrik Bank Maryadit, Raipur and others

Head Note

The provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, are also applicable to Co-operative Bank / Laxmi Mahila Nagrik Sahakari Bank Maryadit.

वित्तीय आस्तियों का प्रतिभूतिकरण तथा पुनर्निर्माण तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 के अपबन्ध सहकारी बैंक/लक्ष्मी महिला नागरिक सहकारी बैंक मर्यादित पर भी लागू होते हैं।