THE HON'BLE SRI JUSTICE M.GANGA RAO

<u>WRIT PETITION Nos.25395 OF 2005 and 22104 OF 2006</u>

<u>COMMON ORDER</u>:

Since the orders impugned in both these writ petitions is one and same, they are taken up together for hearing and being disposed of by this common order.

2. Both these writ petitions are filed questioning the order dated 30.09.2002 in Claim No.3/OSD/2001-2002 passed by the Special Cadre Dy. Registrar/Officer on Special Duty, Krishna D.C.C. Ltd. and also the order dated 27.04.2005 passed in O.A.No.135/2002 of the Andhra Pradesh Co-operative Tribunal, Vijayawada.

3. The case of the petitioners in both these writ petitions is that they were the Directors of the Vissannapet Samithi Area Govt. Employees Co-op. Credit Society Ltd, N.S.P. Vissannapet, Krishna District, (for short 'Society') for the period from October, 1996 to 18.01.2002. During their turn as Directors of the Society, the Society for the benefit and welfare of the members borrowed a sum of Rs.22,47,000/- from the first respondent-Bank, repayable in 36 monthly instalments along with interest @ 19% per annum. The Society, in turn, advanced the said loan amount to its members as personal loans. When the Society failed to repay the said loan amount to the first respondent-Bank by duly collecting from its members, who took loans from the society, the first respondent-Bank approached the second respondent by filing claim petition under Section 62 of the Co-operative Societies Act for issuance of recovery Certificate. Accordingly, after contest, the second respondent issued a certificate of recovery vide Claim

No.3/OSD/2001-2002 dated 30.09.2002 for recovery of the amounts of Rs.24,02,099/- [Rs.14,95,350/- towards principal and Rs.9,06,749/- towards interest] with a further interest @ 22% per annum w.e.f.01.09.2002 till the date of realization. Questioning the said recovery proceedings, the petitioners approached the 3rd respondent-Andhra Pradesh Co-operative Tribunal, Vijayawada. The Tribunal dismissed the O.A. while confirming the award claim No.3/OSD/2001-2002 dated 30.09.2002, against which the petitioners filed this writ petition challenging the recovery certificate dated 30.09.2002 and the order dated 27.04.2005 passed in O.A.

4. Heard both sides and perused the material on record.

5. The main contention of the learned counsel for the petitioners is that the second respondent had no jurisdiction to entertain the said claim in view of the ratio laid down by the Full Bench of this Court in ***M.Babu Rao and others v. Deputy Registrar of Co-operative Societies/Officer on Special Duty, The Vasavi Co-op. Urban Bank Ltd., Malakpet, Hyderabad***[1] wherein it has been mainly held as follows:

> "129 (h) The provisions of Section 61 and 71 {after striking down of the words in Section 71 (1)} are restrictively construed as excluding any jurisdiction, powers or authority in the Registrar in respect of recovery of debts or arrears due to a Co-operative Bank, its members or others which are advanced, lent or otherwise made over to such member or person, during the course of the banking business of such Co-operative Bank.
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> (i) (a) No claim, application or other proceedings lodged or instituted before the Registrar, by a Co-opeartive Bank for recovery of the amount/debt due from a member or

[1] 2005 (4) ALT 327 (F.B.)

> other person pursuant to advances made in the course of its banking business could be entertained or determined by the Registrar.
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> (b) Any award or order passed, certificate issued or an order in execution proceedings, by the Registrar on any claim or application of a Co-operative Bank, is patently and inherently without jurisdiction, null, void and inoperative."

6. The petitioners are not liable to pay any amount in personal capacity. The person in-charge of the Society has to discharge the liability on behalf of the Society. The petitioners being ex-Directors are not personally liable to repay the loan amount to the first respondent-Bank.

7. The counsel appearing for the Bank contends that the first respondent-Bank has disbursed the loan amount of Rs.22,47,000/- on 10.01.1997 to the Society and the loan amount was recoverable in 36 monthly instalments i.e. till 10.01.2010 with 10% interest besides penal interest on the over due instalments at 3%. The petitioners being the Directors and Executive Committee members of the Society at the relevant point of time, have given personal undertaking by executing surety bond for repayment of the loan amount to the first respondent-Bank. When they failed to repay the loan amount, the first respondent-Bank rightly approached the second respondent-Deputy Registrar of Co-operative Societies under Section 62 of the A.P. Co-operative Societies Act and after giving opportunity to the petitioners, recovery certificate dated 30.09.2002 was issued, against which the petitioners unsuccessful preferred an appeal before the Tribunal and the same was dismissed by the Tribunal. The counsel further contended that the petitioners having admitted the receipt of the loan amount from the first respondent-Bank, they

are not allowed to contend that the first respondent-Bank was not right in challenging the proceedings initiated for recovery of the loan amount, having admitted the same and being the sureties to the said loan amounts. The counsel further contended that the decision of the Full Bench relied by the petitioners' counsel is not applicable to the present case as the said decision is prospective in nature while admitting that the first respondent-Bank is doing banking business and it is a bank for all purposes under the provisions of the Banking Regulations.

8. Having heard both sides and perused the material on record, this Court found that the first respondent-Bank initiated ineffective recovery proceedings by approaching the second respondent under Section 62 of the A.P. Co-operative Societies Act and pursued the recovery proceedings against the ex-Directors of the Society instead of proceeding against the Society for recovery. Further, it appears that at the instance of the person in-charge, proceedings under Section 51 of the Co-operative Societies Act were initiated but the result of the said proceedings is not known either to the respondents or the petitioners to fix the responsibility on the petitioners, who were the Directors and Managing Committee members of the Society. In any event, in view of the decision of the Full Bench of this Court, referred supra, the first respondent-Bank, being a bank as defined under Section 2 (d) and (e) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, ought to have initiated proceedings under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, by approaching the Debt Recovery Tribunal, for recovery of the loan amount.

9. Accordingly, the Writ Petition is allowed by setting aside the recovery certificate dated 30.09.2002 issued by the 2nd respondent and also the order dated 27.04.2005 passed by the 3rd respondent-Tribunal. However, liberty is given to the second respondent-Bank to initiate recovery proceedings under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and in accordance with law.

10. Miscellaneous petitions pending in these petitions, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

1st February, 2018
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