

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10102 OF 2019

WITH

WRIT PETITION NO.10114 OF 2019

WITH

WRIT PETITION (ST.) NO.25493 OF 2019

Raj Systems Pvt. Ltd. and others ... Petitioners

Vs.

Mahanagar Co-op. Bank Ltd. and others ... Respondents

WITH

WRIT PETITION NO.10108 OF 2019

M/s Nero Realityz and others ... Petitioners

Vs.

Mahanagar Co-op. Bank Ltd. and others ... Respondents

Mr. A. V. Anturkar, Senior Advocate with Mr. Surel Shah, Mr. Ashutosh Gole, Mr. Shubham Misar and Mr. Swaroop Karade i/by Mr. P. K. Gogad, Advocate for the Petitioners.

Mr. Kevin Satelwad, Senior Advocate with Mr. P. A. Sarwankar and Mr. Ameya Kulkarni i/by M/s Sarwankar & Co. for Respondent No.1 - Bank.

Mr. Anoop Patil for Respondent No.4 in W.P.No.10114 of 2019 and W.P. (St.) No.25493 of 2019.

Mr. C. D. Mali, AGP for Respondent-State in W.P.No.10102 of 2019.

Mr. S. L. Babar, AGP for Respondent-State in W.P.No.10108 of 2019.

Mr. N. C. Walimbe, AGP for Respondent-State in W.P. No.10114 of 2019.

Mr. Nelson Rajan, AGP for Respondent-State in W.P.(St.)No.25493 / 2019.

CORAM : **UJJAL BHUYAN, J.**
RESERVED ON : 19th NOVEMBER, 2019
PRONOUNCED ON: 7th JANUARY, 2020

ORDER :

Issue raised in all the writ petitions being the same, those were heard together on 19.11.2019 and are being disposed of by this common order.

2. Short point for consideration in all the four writ petitions is whether in the facts and circumstances of the case, the two lower authorities were justified in rejecting the application of the petitioners filed under Section 10 of the Code of Civil Procedure, 1908 for stay of proceedings instituted by respondent No.1 under Section 101 of the Maharashtra Co-operative Societies Act, 1960 till adjudication of the dispute filed by the petitioners under Section 91 of the said Act?

3. Heard Mr. Anturkar, learned Senior Counsel for the petitioners; Mr. Satelwad, learned Senior Counsel for respondent No.1 - Bank; Mr. Patil, learned counsel for respondent No.4 in W.P.No.10114 of 2019 and W.P.(St.) No.25493 of 2019; also heard Mr. Mali, Mr. Babar, Mr. Walimbe and Mr. Nelson Rajan, learned Assistant Government Pleaders for the respondent-State in W.P.Nos.10102 of 2019, 10108 of 2019, 10114 of 2019 and W.P.(St.) No.25493 of 2019 respectively.

4. As requested on behalf of the petitioners, Writ Petition No.10108 of 2019 is taken up as the lead case.

5. Challenge made in this writ petition is to the order dated 06.08.2019 passed by the Divisional Joint Registrar of Co-operative Societies, Pune Division, Pune i.e. respondent No.3 affirming the order dated 24.04.2019 passed by the Deputy Registrar of Co-operative Societies, Pune i.e. respondent No.2 rejecting the application filed by the petitioners under Section 10 of the Code of Civil Procedure, 1908 for stay of Section 101 proceedings under the Maharashtra Co-operative Societies Act, 1960 (briefly 'the Act' hereinafter) filed by respondent No.1 till adjudication of the dispute lodged by the petitioners under Section 91 of the said Act.

6. According to the petitioners, M/s. Raj Systems Private Limited and

petitioner No.1 sought financial assistance from respondent No.1, which is Mahanagar Co-operative Bank Limited, a co-operative credit society. In this connection, the prospective borrowers had offered various properties as security. Respondent No.1 had agreed to grant loan including credit facilities to the borrowers.

7. Case of the petitioners is that Chairman of Respondent No.1 had told them that one of his close relatives and old customer of respondent No.1 Mr. Kumar Narawade, Director of Sai Dutta Infra Private Limited was facing financial difficulties. His loan account with respondent No.1 was declared as a Non-Performing Asset (NPA). The borrowers were told that credit facilities to them would be approved on the condition that an amount of Rs.1,76,50,000.00 should be transferred to the NPA account of Mr. Kumar Narawade. The borrowers were impressed upon that since direct crediting into the NPA account was not possible, such a round about routing was necessary. Borrowers were assured that in the month of April, 2015, the aforesaid amount would be transferred back into the accounts of the borrowers. Faced with the difficult situation and in dire need of finance, the borrowers accepted the above condition though they had no business relations with Mr. Kumar Narawade. Though there was a total loan transaction of more than Rs.11,00,00,000.00 between respondent No.1 and the borrowers, the latter had to part with an amount of Rs.1,76,50,000.00 to Mr. Kumar Narawade.

8. It is stated that the borrowers realized that this was a conspiracy hatched at the instance of respondent No.1 to defraud them.

9. Faced with such a situation, the borrowers filed a dispute before the Co-operative Court at Pune for a declaration that the disputants i.e. the borrowers were not liable to pay an amount of Rs.1,76,50,000.00 to respondent No.1 and for a further declaration that the loan transaction was a bogus and sham

transaction; further the disputants were not liable to pay any amount to respondent No.1. The said dispute was filed on 06.04.2018 and was registered as Dispute No.46 of 2018.

10. According to the petitioners, as a counter-blast to the dispute, respondent No.1 filed 4 applications against each of the disputants under Section 101 of the Act for recovery of the alleged loan amount. The said applications were filed in the month of December, 2018 before the Deputy Registrar of Co-operative Societies, Pune except in Writ Petition No.10108 of 2019 where it was filed on 06.08.2018.

11. Petitioners contended that as the subject matter of the dispute in Dispute No.46 of 2018 was identical with the subject matter of the applications filed by respondent No.1 under Section 101 of the Act, simultaneous hearing of the two proceedings would not be in the interest of justice as it could lead to conflicting decisions. At any rate, the dispute was filed by the petitioners much earlier than the applications under Section 101 of the Act were filed by respondent No.1. Taking the plea that it was necessary in the interest of justice that during the pendency of Dispute No.46 of 2018 hearing of the applications under Section 101 of the Act be stayed, petitioners filed applications before respondent No.2 under Section 10 of the Code of Civil Procedure, 1908 to stay proceedings under Section 101 of the Act till adjudication of Dispute No.46 of 2018.

12. Since altogether 4 applications were filed by respondent No.1 under Section 101 of the Act, petitioners filed similar applications under Section 10 of the Code of Civil Procedure, 1908 in all the four proceedings.

13. After hearing the parties, respondent No.2 passed a common order dated 24.04.2019 rejecting all the applications filed by the petitioners under Section

10 of the Code of Civil Procedure, 1908.

14. Being aggrieved by the said order dated 24.04.2019, petitioners filed Revision Application No.185 of 2019 before respondent No.3. Revision Application was contested by respondent No.1.

15. Respondent No.3 after hearing the parties passed order dated 06.08.2019 rejecting Revision Application No.185 of 2019.

16. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

17. Respondent No.1 has filed a short affidavit to oppose admission. It is stated that as on 30.09.2019 as per ledger account of respondent No.1, a sum of Rs.1,77,41,120.00 was recoverable from the petitioners.

18. It is stated that on application of the petitioners, a term loan of Rs.1,50,00,000.00 was sanctioned to the petitioners on 09.03.2017. For availing the above loan facility, petitioners had mortgaged land bearing Gat No.600, area admeasuring 1 Hectare 35 Are at Village Babhulsar Khurd, Taluka Shirur, District Pune.

19. The sanctioned loan amount was credited to the loan account of the petitioners whereafter petitioners had utilized the same. However, there was default on the part of the petitioners in repayment of the loan and therefore, the loan account of the petitioners was classified as NPA as per guidelines of Reserve Bank of India (RBI).

20. Respondent No.1 being a co-operative bank registered under the Act filed application under Section 101 of the Act before the Deputy Registrar of

Co-operative Societies, Pune for issuance of recovery certificate against the petitioners.

21. It is admitted that petitioners have filed a dispute being Dispute No.46 of 2018 before the Co-operative Court, Pune. However, it is contended that allegation of the petitioners that respondent No.1 had transferred money from the bank account of petitioner No.1 to the account of Mr. Kumar Narawade has been denied. It is also stated that the issue in the dispute filed by the petitioners against respondent No.1 before the Co-operative Court and the issue in the application for recovery certificate filed by respondent No.1 against petitioner No.1 is not the same. Decision on the dispute would have no bearing on the application for recovery certificate.

22. It is asserted that petitioner No.1 has business relations with M/s. Sai Dutta Infra Private Limited and because of such business relations, petitioner No.1 had given a friendly loan of Rs.1,76,50,000.00 to Mr. Kumar Narawade, a Director of the said company, for which Mr. Kumar Narawade had executed a promissory note in favour of petitioner No.1.

23. Alleging non-refund of the aforesaid amount, petitioner No.1 had lodged a police complaint against M/s. Sai Dutta Infra Private Limited for recovery of the dues; petitioner No.1 has also filed a recovery suit bearing Special Suit No.514 of 2018 against M/s. Sai Dutta Infra Private Limited for recovery of the said amount. The suit is pending in the Court of Civil Judge, Senior Division, Pune.

24. Regarding recovery proceedings instituted by respondent No.1 under Section 101 of the Act, it is stated that the same is a remedy available to respondent No.1 to recover its dues. Recovery proceeding under the Securitization and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (briefly the 'Securitization Act' hereinafter) is an additional remedy available to respondent No.1. Both the remedies are not in derogation of each other.

25. It is further stated that the issue in the dispute and the issue in the application for recovery certificate are different and therefore, Section 10 of the Civil Procedure Code, 1908 would have no application. Impugned orders rejecting the applications of the petitioners under Section 10 of the Code of Civil Procedure, 1908 are just and proper and no interference is called for.

26. Respondent No.1 has also filed a short affidavit to oppose admission of Writ Petition No.10102 of 2019. While basic contention is the same, it is additionally stated that insofar petitioner No.1 of Writ Petition No.10102 of 2019 is concerned, as on 30.09.2019 dues recoverable by respondent No.1 from petitioner No.1 was Rs.9,37,41,451.00. Respondent No.1 had sanctioned term loan of Rs.3,00,00,000.00 to petitioner No.1 on 19.03.2015; another term loan of Rs.2,00,00,000.00 on 29.02.2016; and cash credit facility of Rs.2,00,00,000.00 on 27.03.2017. For availing the above loan facilities, petitioner No.1 had mortgaged six different plots of land in favor of respondent No.1. The loan amounts were credited to the loan account of the petitioner No.1 on 27.03.2015, 18.03.2016 and 31.03.2017 respectively.

27. For failure to repay the loan, the loan account of petitioner No.1 was classified as NPA whereafter respondent No.1 took recourse to the provisions of the Securitization Act, following which symbolic possession of the mortgaged properties were taken over on 16.02.2018. After the District Magistrate passed order under Section 14 of the Securitization Act on 20.10.2018, physical possession of some of the mortgaged properties were taken over by respondent No.1.

28. Petitioner No.1 filed Special Civil Suit No.1828 of 2018. However, injunction was denied to petitioner No.1 vide order dated 28.11.2018 whereafter petitioner No.1 filed Appeal No.440 of 2018 before the District Court at Pune which was dismissed on 21.01.2019.

29. Respondent No.1 decided to proceed with auction sale of the mortgaged properties possession of which were taken over. Petitioner No.1 filed application before the Debts Recovery Tribunal, Pune for staying auction sale. Tribunal vide order dated 25.05.2019 has stayed the auction sale.

30. Rest of the averments are identical to the averments made in the affidavit filed in Writ Petition No.10108 of 2019.

31. Mr. A. V. Anturkar, learned Senior Counsel representing the petitioners submits that petitioners have disputed genuineness of the loan transactions and therefore, petitioners had filed dispute under Section 91 of the Act being Dispute No.46 of 2018 before the co-operative court. The dispute was filed by the petitioners in the month of April, 2018. He submits that as a counter-blast, respondent No.1 filed proceedings under Section 101 of the Act before the Deputy Registrar of Co-operative Societies, Pune. Such applications were filed on 06.08.2018 in Writ Petition No.10108 of 2019 and in respect of the other writ petitions, in the month of December, 2018.

31.1. He further submits that since the matter in issue in the dispute and in Section 101 applications was the same, petitioners filed applications under Section 10 of the Civil Procedure Code for stay of proceedings under Section 101 of the Act. Without properly appreciating contentions of the petitioners, such applications were rejected by the Deputy Registrar vide order dated 24.04.2019. Revision applications filed by the petitioners were rejected by respondent No.3 i.e., Divisional Joint Registrar of Co-operative Societies,

Pune Division on 06.08.2019.

31.2. Mr. Anturkar has referred to Section 91 of the Act, more particularly sub-section (1) thereof and contends that dispute filed by the petitioners are perfectly maintainable before the co-operative court. Subject matter of dispute under Section 91 and proceedings under Section 101 was the same. As both the proceedings could not be heard independently, there being possibility of conflicting decisions, applications under Section 10 of the Civil Procedure Code were rightly filed by the petitioners.

31.3. At this stage, Mr. Anturkar has referred to sub-section (1) of Section 101 and submits that an application thereunder can only be for recovery of arrears of the dues as distinguishable from arrears of sum advanced. Explaining further, he submits that the expression “arrears due” has been interpreted by a Division Bench of this Court in the case of *Top Ten Vs. State of Maharashtra*, **2012 (2) Bom.C.R. 647** to mean the ‘amount which is found to be or determined to be outstanding’. This view is reiterated in *M/s. Shewalkar Developers Vs. Rupee Co-operative Bank*, **2016 (1) Mh.L.J. 382** as per which decision unless the amount due is crystalized, resort to Section 101 proceedings would be impermissible especially pending adjudication of dispute under Section 91.

31.4. Summing up his submissions, he contends that proceedings under Section 101 cannot go on when a dispute under Section 91 on the same set of facts is pending though he would contend that the very initiation of proceedings under Section 101 of the Act itself was without jurisdiction as the alleged ‘arrears due’ has not been determined.

32. On the other hand, Mr. Setalwad, learned Senior Counsel representing respondent No.1 in all the proceedings submits that applications filed by the

petitioners under Section 10 of the Civil Procedure Code were not maintainable and were rightly rejected by the authorities below. He submits that this point has been specifically clarified by this Court in *Tarkude Hotels Private Limited Vs. Rupee Co-operative Bank Limited*, **2011 (5) Mh.L.J. 812**. More specifically, he has referred to paragraph 19 of the said judgment and contends that the sweep of power under Section 10 of the Civil Procedure Code can by no means be read into the Act, more particularly Sections 91 to 98 thereof. He submits that a co-operative court under the Act is not a civil court in the context of Section 10 of the Civil Procedure Code and that a dispute under Section 91 cannot be construed to be a suit within the meaning of the Civil Procedure Code. In this connection, he has also placed reliance on a decision of the Supreme Court in *National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara*, **(2005) 2 SCC 256** wherein Supreme Court held that proceedings before a labour court cannot be equated with proceedings before a civil court. They are not courts of concurrent jurisdiction. Therefore, application of Section 10 in that case was ruled out.

32.1. His further contention is that even assuming for the sake of argument that Section 10 of the Civil Procedure Code is applicable to co-operative courts, ingredients necessary to comply with the requirement of Section 10 are not fulfilled in the present case. He submits that the matter before the co-operative court under Section 91 and the matter before the Deputy Registrar of Co-operative Societies under Section 101 is not directly and substantially the same issue. Whole of the subject matter in both the proceedings must be identical which is not the case in the present petitions. While proceeding under Section 91 is for settlement of disputes, proceeding under Section 101 is for recovery of sums and arrears.

32.2. Petitioners in their Section 91 applications have denied their liability to pay Rs.1.76 crores whereas respondent No.1 in their proceedings under

Section 101 has sought for recovery of a total amount of Rs.11.29 crores against the petitioners, which includes M/s. Raj Systems and M/s. Nero Realityz. Even if petitioners are held not liable to pay Rs.1.76 crores, then also respondent No.1 would not be precluded from recovering the balance amount. Therefore, even if contention of the petitioners is accepted, then also the dispute pertains only to a part of the subject matter and not the entire subject matter.

32.3. Learned Senior Counsel for respondent No.1 has also made submissions touching upon merit of the case. In this connection, he stated that petitioner has filed a suit against M/s. Sai Dutta Infra Private Limited of which Mr. Kumar Narawade is one of the Directors seeking recovery of Rs.2.93 crores from the latter. Statements made in the suit are contrary to statements made by the petitioners in the applications filed under Section 91.

32.4. Clarifying the matter, he submits that transaction of Rs.1.76 crores with M/s. Sai Dutta Infra Private Limited had taken place from the account of M/s. Raj Systems and not from the account of M/s. Nero Realityz.

32.5. Mr. Setalwad has distinguished the decision relied upon by Mr. Anturkar in M/s. Shewalkar Developers (*supra*).

32.6. Concluding his submissions, Mr. Setalwad submits that there cannot be a general proposition that there should be automatic stay of proceedings under Section 101 of the Act if there is a dispute between the same parties under Section 91 of the Act. He therefore, seeks dismissal of all the writ petitions.

33. In his reply, Mr. Anturkar submits that Section 10 of the Civil Procedure Code uses the word “court”. It is not a defined word. Therefore, he has referred to the definition of ‘court’ as given in Black’s Law Dictionary as well

as in the decision of the Supreme Court in *Brajnandan Sinha Vs. Jyoti Narain*, **AIR 1956 SC 66**. Likewise the word 'suit' is also not defined anywhere. Referring to the decisions of the Supreme Court in *Aspi Jal Vs. Khushroo Rustom Dadyburjor*, **(2013) 4 SCC 333** and National Institute of Mental Health & Neuro Sciences (*supra*) which lay down the scope of Section 10 and the test for its applicability, he submits that since subject matter of the dispute under Section 91 and that of the applications under Section 101 is the same, provisions of Section 10 of the Civil Procedure Code will be clearly applicable.

33.1. Referring to the impugned order passed by respondent No.3, he submits that all the three grounds given would not justify passing of the impugned order. In so far decision of a Single Bench of this Court in *Tarkude Hotels Private Limited (supra)* is concerned, he submits that view taken by the learned Judge is not the correct view and is *per incurium*. Learned Judge had incorrectly interpreted the expression 'civil court' though no such expression is used in Section 10 of the Civil Procedure Code. View taken that co-operative courts are not civil courts is not correct. In this connection, he has referred to Section 141 of the Civil Procedure Code. He submits that it is trite that order of an authority has to sustain itself on the strength of the reasons given in the order and cannot seek support from grounds and reasons supplemented or sub-planted later.

34. Learned counsel for respondent No.4 in Writ Petition No.10114 of 2019 and Writ Petition (St.) No.25493 of 2019 has supported the case of the petitioners. In fact it is contended that respondent No.4 is a stranger to the proceedings. Signature of the proprietor of respondent No.4 was taken by bank officials of respondent No.1 on various blank forms and papers as respondent No.4 had agreed to stand as guarantor to a loan availed by one Vishwanath Adak, who is a family friend. Respondent No.4 had never stood as guarantor

to the loans obtained by the petitioners.

35. Submissions made by learned counsel for the parties have been considered; also perused the materials on record.

36. Since the *lis* centers around application of Section 10 of the Code of Civil Procedure, it would be apposite to advert to the said provision at the outset. For ready reference, Section 10 is extracted hereunder:

"10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

37. From a careful perusal of Section 10, it is seen that it starts with a negative injunction by saying that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in India having jurisdiction to grant the relief claimed, the remaining portion of the said Section not being relevant for the present case. Thus, for applicability of Section 10 what is required is that firstly, there must be two suits between the same parties or between parties, either of the parties or both the parties litigating under the same title; secondly, one suit must be previously instituted and the second subsequently; and thirdly, the matter in issue in the subsequent suit is also directly and

substantially in issue in the previously instituted suit. If these conditions are fulfilled, then the court in which the subsequent suit is instituted shall not proceed with the trial of the subsequent suit.

38. In *National Institute of Mental Health & Neuro Sciences (supra)*, Supreme Court examined the object of Section 10 as well as its applicability. In that case, respondent had sought for stay of the subsequent civil suit by invoking Section 10 read with Section 151 of the Civil Procedure Code contending that writ petition arising out of award passed by the Labour Court on the same subject matter was pending. Question which came up for consideration before the Supreme Court was whether application filed by the respondent under Section 10 read with Section 151 of the Civil Procedure Code seeking stay of the subsequent civil suit was maintainable?

39. Supreme Court noted that the object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue; the object is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in the previously instituted suit. Supreme Court further observed that language of Section 10 was suggestive that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The fundamental test to attract Section 10 is whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical; the whole of the subject matter in both the proceedings should be identical. It was held thus:

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and

to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previously instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical."

40. After discussing the same, Supreme Court further held that Section 10 is referable to a suit instituted in a civil court. Proceedings before the labour court cannot be equated with the proceedings before a civil court. They are not courts of concurrent jurisdiction. Therefore, it was held that Section 10 would have no application to the facts of that case. Paragraph 10 of the judgment reads as under:

"10. As stated above, Section 10 CPC is referable to a suit instituted in a civil court, The proceedings before the labour court cannot be equated with the proceedings before a civil court. They are not the courts of concurrent jurisdiction. In the circumstances, Section 10 CPC has no application to the facts of this case."

41. Supreme Court again considered the object and conditions of Section 10 and the applicability thereof in *Aspi Jal (supra)*. Supreme Court held that the basic purpose and the underlying object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief.

This is to pin down the plaintiff to one litigation so as to avoid possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.

42. Thus from the above, it is seen that Section 10 is basically intended to confine a plaintiff to one litigation and is aimed to protect the defendant from multiplicity of proceedings. In addition to the three conditions mentioned in paragraph 37 above for applicability of Section 10, it has also been held by the Supreme Court that the two courts where the previous and the subsequent suits are instituted must be courts of concurrent jurisdiction.

43. After referring to the decision in National Institute of Mental Health & Neuro Sciences (*supra*), Supreme Court held that the test for applicability of Section 10 is to put a question to the plaintiff: as to whether the plaintiff can get the same relief in the subsequent suit if the earlier suit has been dismissed? If the answer is in the affirmative, the subsequent suit is not fit to be stayed. Supreme Court held as under:

“12. As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what “the matter in issue” exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same. This provision will not apply where few of the matters in issue are common and will apply only when the entire subject matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue. As stated earlier, eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period. Though the ground of eviction in the two suits was similar, the

same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case.”

44. It was clarified that Section 10 will not apply where few of the matters in issue are common but will apply only when the entire subject matter in controversy is the same. Thus, in addition to the four conditions as alluded to herein above, the fifth condition introduced is that for applicability of Section 10, the entire subject matter in controversy in both the suits must be the same.

45. Having noticed the above, Sections 91 and 101 of the Act may now be looked into.

46. Section 91 of the Act relates to disputes. It forms part of Chapter IX which relates to settlement of disputes. As per sub-section (1), notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers, conduct of general meetings, management or business of a society etc. shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society to the co-operative court, if both the parties thereto are one or other of the categories mentioned in clauses (a) to (e).

46.1. As per the proviso, amongst various disputes, any proceeding for recovery of the amount as arrear of land revenue on a certificate granted by the Registrar of Co-operative Societies under sub-sections (1) or (2) of Section 101 shall not be deemed to be a dispute for the purpose of this

Section.

46.2. As per sub-section (3), except as provided under sub-section (2) to Section 93, no court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

46.3. A careful consideration of the relevant provisions contained in Section 91 as noted above would go to show that as per sub-section (1), in case of a dispute relating to the matters enumerated therein, the same may be referred by any of the parties to the dispute to the co-operative court. Interestingly, sub-section (1) starts with a *non-obstante* clause, meaning thereby that it has overriding effect over anything contained in any other law for the time being in force.

46.4. On the other hand, under sub-section (3), except as provided under sub-section (2) to Section 93, no court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

47. Section 93 deals with transfer of disputes from one co-operative court to another and suspension of proceedings in certain cases. As per sub-section (2) which starts with a *non obstante* clause, notwithstanding anything contained in the Act, the co-operative court, on an application made to it by any of the parties to the dispute, may, if it thinks fit, suspend any proceedings in respect of any dispute if the question at issue is one involving complicated questions of law and fact, until the question has been tried in a regular suit instituted by one of the parties or by the society. It further says that if any such suit is not instituted in a civil court within two months from the date of the order of the co-operative court, the concerned co-operative court shall continue the proceedings

and decide the dispute.

48. Therefore, on a conjoint reading of sub-section (1) of Section 91, sub-section (3) of Section 91 and sub-section (2) of Section 93, what is discernible is that the Legislature has made a fine distinction between a co-operative court in sub-section (1) of Section 91 and court in sub-section (3) of Section 91 which is further qualified by the expression 'civil court' appearing in sub-section (2) of Section 93. Therefore, the legislative intent is quite clear inasmuch as the Legislature did not intend to construe a co-operative court as a court to adjudicate a suit or as qualified in sub-section (2) of Section 93, a civil court. Moreover, a distinction has also been made between a dispute under sub-section (1) of Section 91 and a suit.

48.1. That apart, as per the proviso to sub-section (1) of Section 91, a proceeding for issue of recovery certificate under sub-sections (1) or (2) of Section 101 has been categorically excluded from the purview of dispute under Section 91. The proviso says that such a proceeding along with others as mentioned therein shall not be deemed to be a dispute for the purpose of Section 91.

49. Section 101 of the Act may now be referred to. Section 101 deals with recovery of certain sums and arrears due to certain societies as arrears of land revenue. Like sub-section (1) of Section 91, sub-section (1) of Section 101 also starts with a *non obstante* clause. Though sub-section (1) is quite longish, only that portion of sub-section (1) relevant for the present case would be referred to. It says that notwithstanding anything contained in Sections 91, 93 and 98, on an application made by an urban co-operative bank for the recovery of arrears of its dues and on the said bank furnishing a statement of accounts and any other

documents as may be prescribed in respect of the arrears, Registrar of Co-operative Societies may after making enquiry grant a certificate for the recovery of the amount stated therein to be due as arrears.

49.1. A careful scrutiny of the provisions contained in sub-section (1) of Section 101 would go to show that notwithstanding anything contained in Sections 91, 93 and 98, on an application made by an urban co-operative bank for the recovery of arrears of its dues and on the said bank furnishing a statement of accounts and any other documents as may be prescribed in respect of the arrears, the Registrar may after making enquiry grant a certificate for recovery of the amount stated therein to be due as arrears.

50. Therefore, from a comparative analysis of Sections 91 and 101 of the Act, it is quite clear that both the Sections operate on two different fields. Though there can be similarity on certain aspects of the dispute raised under Section 91 which may form part of the arrear dues of an urban co-operative bank, the two provisions cannot be said to be identical with each other. That apart, a co-operative court under Section 91 does not have the same jurisdiction as the Registrar of Co-operative Societies exercising powers under Section 101; in any case, the two cannot be said to be courts of concurrent jurisdiction.

50.1. Though a view may be taken that since both the provisions have overriding effect in view of use of the expression ‘notwithstanding’ at the start of the two provisions, nonetheless in the considered opinion of the Court, the same would not make any material difference to the interpretation of the two provisions which as already discussed above are independent of each other and operate in two different fields. In such circumstances harmonious construction has to be applied. As a matter of

fact, in Top Ten (*supra*), a Division Bench of this Court examined both the provisions of Section 91 and Section 101 and held that language of both the provisions is plain and unambiguous. Both the provisions can be construed harmoniously. Though both the provisions begin with *non obstante* clause, they do not militate against each other but proceeds to advance the legislative intent of enabling a society to have a speedy remedy for recovery of arrear dues as claimed by it. It has been held that there is no repugnancy or inconsistency *inter se* between the two provisions; while Section 91 is a general remedy and general law covering all disputes, Section 101 governs an extremely small type or nature therefrom where the only possible dispute is about the quantum of arrears demonstrated to be due.

51. Reverting back to the present case, insofar the dispute raised by the petitioners under Section 91 of the Act is concerned, it is seen that the dispute has been raised by the petitioners primarily seeking the relief that the disputants i.e. the petitioners are not liable to pay an amount of Rs.1,76,50,000.00 to opponent No.1 i.e. respondent No.1.

52. On the other hand, respondent No.1 in the applications under Section 101 has sought for recovery certificate for the entire loan transactions which is much more than the aforesaid amount.

53. As already noted above, petitioners had filed applications under Section 10 of the Civil Procedure Code before the Deputy Registrar of Co-operative Societies (Service), Pune for stay of proceedings under Section 101 till conclusion was reached in the proceedings under Section 91 being Dispute No.46 of 2018. Deputy Registrar by his order dated 24.04.2019 rejected the said applications. Against such rejection, petitioners preferred revision application under Section 154 of the Act

along with an application for stay. Revision application has been registered as Revision Application No.185 of 2019. By order dated 06.08.2019, the application for stay has been rejected. Divisional Joint Registrar held that petitioners had obtained loan from respondent No.1. Since the loan has not been repaid, respondent No.1 has invoked provisions of the Securitization Act against the petitioners. Petitioners have filed Dispute No.46 of 2018 against respondent No.1 in the co-operative court. Subsequently, respondent No.1 filed applications under Section 101 before the Deputy Registrar of Co-operative Societies. It was held that applications under Section 101 are for recovery of arrears of the loan availed of by the petitioners. Subject matter of the dispute is different from the proceedings under Section 101. Therefore, provisions of Section 10 of the Civil Procedure Code would not be applicable.

54. In M/s. Shewalkar Developers Ltd. (supra), the issue before this Court was whether proceedings under Section 101 of the Act was legal and valid. Petitioner in that case had availed loan from the respondent-bank, which was an urban co-operative bank. For failure to repay the loan amount, respondent bank issued notice to the petitioner to repay the loan amount with interest failing which the bank initiated proceedings under Section 101 of the Act.

54.1. Petitioner filed dispute before the co-operative court under Section 91 of the Act contending that the loan amount was fictitious and contrary to the claim of the respondent-bank, it was the petitioner who should receive certain amounts from the respondent-bank. In the said dispute, recovery notice issued by the respondent bank was stayed vide order dated 08.10.2012.

54.2. Respondent bank thereafter took recourse to Section 13(2) of the

Securitization Act and called upon the petitioner to pay the amount which was stated to be due.

54.3. Invocation of the provisions of the Securitization Act was challenged by the petitioner in writ petition before this Court and thereafter before the Supreme Court. Supreme Court stayed proceedings under the Securitization Act.

54.4. Respondent bank challenged the stay granted by the co-operative court to the notice under Section 101 before the co-operative appellate court. Co-operative appellate court stayed the order dated 08.10.2012. Following the same, respondent bank moved the Assistant Registrar of Co-operative Societies for issuance of recovery certificate under Section 101 of the Act.

54.5. In the facts of that case, learned Single Judge held that for issuance of recovery certificate under Section 101, the amount charged by the respondent bank which it wants to recover must be a recoverable crystallized amount. Pending crystallization of the amount due, the authority under Section 101 is not authorized to proceed. In such circumstances, Court held that initiation of proceedings under Section 101 itself was without jurisdiction.

54.6. Thus from the above, it is evident that the factual matrix on the basis of which the above judgment was rendered is clearly distinguishable from the facts of the present case and therefore, in the opinion of the Court, the said decision is not applicable. That apart, applicability of Section 10 of the Civil Procedure Code was not an issue in M/s. Shewalkar Developers Ltd. (*supra*).

55. That brings us to Tarkude Hotels Private Limited (*supra*). Judgment in this case was also rendered by a learned Single Judge. Issue raised in this case was whether Section 10 of the Civil Procedure Code would be applicable when there is a dispute under Section 91 on the one hand and a proceeding under Section 101 on the other hand between the same parties touching upon identical subject matter. In categorical terms, this Court held that the sweep of power under Section 10 of the Civil Procedure Code can by no means be read into the Act, particularly Sections 91 to 98 thereof. Such power is not conferred on the co-operative court. It has been held that proceedings before a co-operative court may be civil in nature but that does not mean that the co-operative court trying a dispute is a civil court and the proceeding is a suit within the meaning of the Civil Procedure Code. Relevant portion of the aforesaid judgment is extracted hereunder:

“19. ... However, when it comes to section 10 of Civil Procedure Code, it is more than clear that one cannot lose sight of the fact that section 10 cannot be invoked by applying the tests as if the proceedings before the cooperative court filed by way of disputes are akin to a suit in a civil court. The Civil Procedure Code itself makes it clear in Part I that courts subject to the provisions contained in the Civil Procedure Code have jurisdiction to try all suits of civil nature excepting suits of which cognisance is either expressly or impliedly barred. Prior thereto sections 3 to 5 speak about applicability of Civil Procedure Code to proceedings before other courts. The proceedings may be civil in nature but that does not mean that the court trying them is a civil court and the proceedings are a "suit" within the meaning of Civil Procedure Code. A right to bring in a suit is an inherent right vested in the litigant and, therefore, while clarifying as to what would be the jurisdiction of the civil court to try suits in section 9 read with the explanation, it would at once become clear by section 10 that the court, which is a civil court, is mandated not to proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court having jurisdiction to grant the relief claimed or in any court beyond the limits of India, established or continued by the Central

Government and having like jurisdiction or before the Supreme Court. The sweep of power under section 10 can by no means be read into the MCS Act and particularly section 91 to 98 thereof. The civil court's power to stay trial of subsequently instituted suits is thus available to the civil court. It is not specifically conferred on the cooperative court. That apart, in the peculiar facts of the present case, the learned Judge was in no error in rejecting the application. He has applied the principle laid down in a decision reported in AIR 2005 SC 242, National Institute of mental Health and Neuro Sciences Vs. Parameshwara.”

56. In my considered opinion and following the discussions made above, the decision rendered in Tarkude Hotels Private Limited (supra) would be squarely applicable to the facts of the present case. Moreover, as contended by Mr. Anturkar, learned Senior Counsel the said decision cannot be said to be *per incuriam*; rather, it is applicable to the facts and circumstances of the present case. The co-operative court adjudicating a dispute under Section 91 is not a court or civil court; similarly, Registrar of Co-operative Societies or his delegatee considering issuance of recovery certificate under Section 101 is also not a court or a civil court. Certainly, these two authorities are not ‘courts’ of concurrent jurisdiction. Therefore, Section 10 of the Civil Procedure Code would have no application. As a corollary, it cannot be said as a matter of general proposition that once a dispute is lodged under Section 91 of the Act, an urban co-operative bank which is a party to the dispute would be precluded from filing application for issuance of recovery certificate under Section 101 of the Act.

57. Therefore, having regard to the facts and circumstances of the case and upon thorough consideration of the same, Court is of the view that no case for interference is made out to stay the proceedings under Section 101 of the Act till adjudication of the dispute under Section 91.

58. Writ petitions are without of any merit and are accordingly dismissed.

59. However, there shall be no order as to costs.

(UJJAL BHUYAN, J.)

Minal Parab