HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY ,THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

WRIT APPEAL NOS: 1680, 1681, 1682, 1695, 1696, 1701, 1711, 1712 AND 1714 OF 2017

WA No: 1680 of 2017

Writ Appeal under clause 15 of the Letters Patent Appeal preferred against the Order dated 22.09.2017 passed in WP No. 8910/2007 on the file of the High Court.

Between:

Mohd. Abdullah Khan, Son of Mohd. Baquer Khan, Proprietor, M/s.New Footwear, Shop No.6-8-607/1, Abids, Hyderabad, resident of 16-2-838, Baquer Bagh, Saidabad, Hyderabad.

...PETITIONER/APPELLANT

AND

1. The Hyderabad Cooperative Urban Bank Ltd., at 17-3-486, Pari Mahal, Yakutpura, Hyderabad rep. by its Person Incharge, Manoj Kumar, s/o Anjaiah.
2. The Hyderabad Cooperative Credit Society Limited,, Represented by its President, Syed Hussain Aga, Son of Syed Aga, aged about 70 years, resident of Pari Mahal, Yakutpura, Hyderabad. (Respondents/Writ Petitioners)
3. A.P. Cooperative Tribunal,, Hyderabad, Represented by Chairman.
4. The deputy Registrar/Divisional Cooperative Officer,, Charminal O/o Division, P.S. Nagar, Masabtank, Hyderabad.
5. Ahmed Bin Abdullah, S/o Abdullah Bin Ahmed R/o 22-6-270, Machili Kaman, Hyderabad.
6. Syed Viquaruddin, S/o Syed Hameeduddin, Aged about 27 Years, R/o 1330, Edi Bazar, Hyderabad.
7. Syed Imranuddin, S/o Syed Hameeduddin, aged about 25 years, R/o 1330, Edi Bazar, Hyderabad.

8. Syed Irfanuddin, S/o Syed Hameeduddin, aged about 22 years, R/o 1330, Edi Bazar, Hyderabad.

...RESPONDENTS/RESPONDENTS

WAMP. NO: 3204 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance of the order dated 22/9/2017 made in W.P.No. 8910 of 2007 pending disposal of the above appeal.

Counsel for the Appellant: SRI. M A K MUKHEED

Counsel for the Respondent Nos. 1 & 2: GP FOR COOPERATION

Counsel for the Respondent Nos. 3 & 4: M/S BHARADWAJ ASSOCIATES

Counsel for the Respondent Nos. 5 to 8: NONE APPEARED

WA NO: 1681 OF 2017

Writ Appeal under clause 15 of the Letters Patent against the order passed dated 22-09-2017 in W.P. No 12014 of 2007 on the file of the High Court.

Between:

Mohd. Abdullah Khan, Son of Mohd. Baquer Khan, Proprietor, M/s New Footwear, Shop No.5-8-607/1, Abids, Hyderabad, resident of 16-2-538, Baquer Bagh, Saidabad, Hyderabad

...APPELLANT

AND

1. Ahmed Bin Abdullah, S/o. Abdullah Bin Ahmed R/o. 22-6-270, Machili Kaman, Hyderabad.
2. Syed Viquaruddin S/o Syed Hameeduddin., R/o 1330 Edi Bazar, Hyderabad.
3. Syed Imranuddin S/o Syed Hameeduddin, R/o 1330, Edi Bazar, Hyderabad.
4. Syed Irfanuddin S/o Syed Hameeduddin,, R/o 1330, Edi Bazar, Hyderabad. (Respondents 2 to 4 are rep by their GPA Holder Ahmed Bin Abdullah the 1st Respondent herein) (Respondents/Writ Petitioners)
5. The Hyderabad Cooperative Urban Bank Ltd. at 17-3-486,, Pari Mahal, Yakutpura, Hyderabad rep. by its Person Incharge, Manoj Kumar, S/o Anjaiah
6. The Divisional Cooperative Officer, Charminal Division, P.S. Nagar,, Masabtank, Hyderabad.
7. A.P. Cooperative Tribunal, Hyderabad, Represented by, Chairman, Hyderabad.
8. Wahaz Mirza, S/o. Mahmood Mirza, resident of 5-9-226/7-B,, Chirag All Lane, Abids, Hyderabad.

...RESPONDENTS/RESPONDENTS

WAMP. NO: 3205 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all

further proceedings in pursuance of the order dated 22/9/2017 made in W.P. No. 12014 of 2007 pending disposal of the above appeal.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to appoint Advocate receiver to take over the property admeasuring to an extent of 6000 SFT comprising of cellar ground, first floors in H.No 5-6-608 and 5.8.607 situated at Abids, Hyderabad.

Counsel for the Appellant:SRI. M A K MUKHEED

Counsel for the Respondent Nos. 1 to 4: SRI. D MADHAVA RAO

Counsel for the Respondent No. 6: GP FOR COOPERATION

Counsel for the Respondent No. 7: SRI. K JAGADISHWAR REDDY

Counsel for the Respondent No. 5 & 8: NONE APPEARED

WA NO: 1682 OF 2017

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated.22.09.2017 passed in WPNo.12015/2007 on the file of the High Court.

Between:

Mohd. Abdullah Khan, Son of Mohd. Baquer Khan, Proprietor M/s.New Footwear, Shop No.5-8-607/1, Abids, Hyderabad, resident of 16-2-838, Baquer Bagh, Saidabad, Hyderabad.

...APPELLANT/RESPONDENT NO. 1

AND

1. Ahmed Bin Abdullah, S/o Abdullah Bin Ahmed R/o 22-6-270, Machili Kaman, Hyderabad
2. Syed Viquruddin, S/o Syed Hameeduddin, Aged about 27 Years, R/o 1330, Edi Bazar, Hyderabad.
3. Syed Imraruddin, S/o Syed Hameeduddin, aged about 25 years, R/o 1330, Edi Bazar, Hyderabad.
4. Syed Irfanuddin, S/o S/o Syed Hameeduddin, aged about 22 years, R/o 1330, Edi Bazar, Hyderabad. (Respondents 2 to 4 are rep by their GPA Holder Ahmed Bin Abdullah i.e 1st Respondent herein) (RESPONDENTS/WRIT PETITIONERS)
5. The Hyderabad Cooperative Urban Bank Ltd., at 17-3-486, Pan Mahal, Yakutpura Hyderabad rep. by its Person Incharge, Manoj Kumar, S/o Anjaiah.
6. A.P. Cooperative Tribunal, Hyderabad, Represented by Chairman.
7. The Cooperative Sub Registrar/Arbitrator,, O/o Divisional Cooperative Officer, Charminar Division, P.S. Nagar, Masabtank, Hyderabad.
8. Wahaz Mirza,, son of Mahmood Mirza, resident of 5-9-226/7-B, Chirag Ali Lane, Abids, Hyderabad.

...RESPONDENTS/RESPONDENTS

WAMP. NO: 3201 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance of the order dated 22/9/2017 made in W.P.No 12015 of 2007 pending disposal of the above appeal.

Counsel for the Appellant:SRI. M A K MUKHEED

Counsel for the Respondent Nos. 1 to 4: SRI. D MADHAVA RAO

Counsel for the Respondent No. 6: SRI. K JAGADISHWAR REDDY

Counsel for the Respondent No. 7: GP FOR COOPERATION

Counsel for the Respondent Nos. 5 & 8: NONE APPEARED

WA NO: 1695 OF 2017

Writ Appeal under clause 15 of the Letters Patent Appeal preferred against the order dated:22.03.2017 passed in WPNo.9084/2007 on the file of the High Court.

Between:

Mohd. Abdullah Khan, Son of Mohd. Baquer Khan Proprietor, M/s.New Footwear Shop No5-8-607/1, Abids, Hyderabad, resident of 16-2-838, Baquer Bagh, Saidabad, Hyderabad.

...APPELLANT

AND

1. The Hyderabad Cooperative Urban Bank Ltd , at 17-3-486, Parid Mahal, Yakutpura, Hyderabad rep. by its Person Inderge, Manoj Kumar, s/o Anjaiah.
2. The Hyderabad Cooperative Credit Society Limited. Represented by its President, Syed Hussain Aga, Son of Syed Aga, aged about 70 years, resident of Pad Mahal, Yakutpura, Hyderabad. (Respondents/Writ Petitioners)
3. A.P. Cooperative Tribunal. Hyderabad, Represented by Chairman.
4. The Cooperative Sub Registrar/Arbitrator. O/o Divisional Cooperative Officer, Charminal Division, P.S. Nagar, Masabtank, Hyderabad.
5. Wahaz Mirza, son Mahmood Mirza, resident of 5-9-226/7-B, Chirag Ali Lane, Abids, Hyderabad.

...RESPONDENTS/RESPONDENTS

WAMP. NO: 3238 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance of the order dated 22/9/2017 made in W.P.No. 9084 of 2007 pending disposal of the above appeal.

Counsel for the Appellant:SRI. M A K MUKHEED

Counsel for the Respondent Nos. 1 & 2: M/S BHARADWAJ ASSOCIATES

Counsel for the Respondent No. 3: SRI. K JAGADISHWAR REDDY

Counsel for the Respondent No. 4: GP FOR COOPERATION

Counsel for the Respondent No. 5: NONE APPEARED

WA NO: 1696 OF 2017

Writ Appeal under clause 15 of the Letters Patent Appeal preferred against the Order dated 22.09.2017 passed in WP No. 8911/2007 on the file of the High Court.

Between:

Mohd. Abdullah Khan, Son of Mohd. Baquer Khan, Proprietor, M/s.New Footwear, Shop No.5-8-607/1, Abids, Hyderabad, resident of 16-2-838, Baquer Bagh, Saidabad, Hyderabad.

...PETITIONER/APPELLANT

AND

1. The Hyderabad Cooperative Urban Bank Ltd, at 17-3-486, Pari Mahal, Yakutpura, Hyderabad rep. by its Person Incharge, Manoj Kumar, s/o Anjaiah.
2. The Hyderabad Cooperative Credit Society Limited., Represented by its President, Syed Hussain Aga, Son of Syed Aga, aged about 70 years, resident of Pari Mahal, Yakutpura, Hyderabad. (Respondents/Writ Petitioners)
3. A.P. Cooperative Tribunal, Hyderabad, Represented by Chairman.
4. The deputy Registrar/ Divisional Cooperative Officer,, Charminal Division, Hyderabad.
5. Ahmed Bin Abdullah, S/o Abdullah Bin Ahmed R/o 22-6-270, Machili Kaman, Hyderabad.

6. Syed Viquaruddin, S/o Syed Hameeduddin, Aged about 27 Years, R/o 1330, Edi Bazar, Hyderabad.
7. Syed Imranuddin, S/o Syed Hameeduddin, aged about 25 years, R/o 1330, Edi Bazar, Hyderabad.
8. Syed Irfanuddin S/o S/o Syed Hameeduddin, aged about 22 years, R/o 1330, Edi Bazar, Hyderabad.

...RESPONDENTS/RESPONDENTS

WAMP. NO: 3239 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance of the order dated 22/9/2017 made in W.P. No. 6911 of 2007 pending disposal of the above appeal.

Counsel for the Appellant:SRI. M A K MUKHEED

Counsel for the Respondent Nos. 1 & 2: M/S BHARADWAJ ASSOCIATES

Counsel for the Respondent No. 3: SRI. K JAGADISHWAR REDDY

Counsel for the Respondent No. 4: GP FOR COOPERATION

Counsel for the Respondent Nos. 5 to 8: NONE APPEARED

WA NO: 1701 OF 2017

Writ Appeal under clause 15 of the Letters Patent Appeal preferred against the order dated 22.09.2017 passed in WPNo.9044/2007 on the file of the High Court.

Between:

Mohd. Abdullah Khan, Son of Mohd. Baquer Khan, Proprietor, M/s.New Footwear Shop No.5-8-607/1, Abids, Hyderabad, resident of 16-2-838, Baquer Bagh, Saifabad, Hyderabad.

...PETITIONERAPPELLANT

AND

1. The Hyderabad Cooperative Urban Bank Ltd., at 17-3-486, Pari Mahal, Yakutpura, Hyderabad rep. by its Person Incharge, Manoj Kumar s/o Anjaiah
2. The Hyderabad Cooperative Credit Society Limited., Represented by its President, Syed Hussain Aga, Son of Syed Aga, aged about 70 years, resident of Pari Mahal, Yakutpura, Hyderabad. (Writ Petitioners)
3. A.P. Cooperative Tribunal, Hyderabad. Represented by Chairman.
4. The Deputy Registrar/ Divisional Cooperative Officer., Charminar D/D Division P.S. Nagar, Masabtank, Hyderabad.
5. Ahmed Bin Abdullah, S/o Abdullah Bin Ahmed R/o 22-6-270, Machli Kaman, Hyderabad.
6. Syed Viquaruddin, S/o Syed Hameeduddin, Aged about 27 Years, R/o 1330, Edi Bazar, Hyderabad.
7. Syed Imranuddin, S/o Syed Hameeduddin, aged about 25 years, R/o 1330, Edi Bazar, Hyderabad.
8. Syed Irfanuddin, S/o S/o Syed Hameeduddin, aged about 22 years, R/o 1330, Edi Bazar, Hyderabad.

...RESPONDENTS/RESPONDENTS

WAMP. NO: 3244 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance of the order dated 22.09.2017 made in WPNo.9044/2007, pending disposal of the above appeal

Counsel for the Appellant:SRI. T BALA MOHAN REDDY

Counsel for the Respondent Nos. 1 & 2: M/S BHARADWAJ ASSOCIATES

Counsel for the Respondent No. 3: SRI.K JAGADISHWAR REDDY

Counsel for the Respondent No. 4: GP FOR COOPERATION

Counsel for the Respondent Nos. 5 to 8: NONE APPEARED

WA NO: 1711 OF 2017

Writ Appeal under clause 15 of the Letters Patent against the order passed dated 22-09-2017 in W.P. No. 12016 of 2007 on the file of the High Court.

Between:

Mohd.Abdullah Khan, Son of Mohd Baquer Khan, Proprietor, M/s.New Footwear, Shop No.5-8-607/1, Abids, Hyderabad, resident of 16-2-838, Baquer Bagh, Saidabad, Hyderabad.

...APPELLANT

AND

1. Ahmed Bin Abdullah, S/o. Abdullah Bin Ahmed, R/o. 22-6-270, Machili Kaman, Hyderabad.
2. Syed Viquaruddin S/o Syed Hameeduddin, R/o 1330, Edi Bazar, Hyderabad.
3. Syed Imranuddin S/o Syed Hameeduddin, R/o 1330, Edi Bazar, Hyderabad.
4. Syed Irfanuddin S/o. Syed Hameeduddin, R/o 1330, Edi Bazar, Hyderabad. (Respondents 2 to 4 are rep by their GPA Holder Ahmed Bin Abdullah i.e., 1st Respondent herein) (Respondents/Writ Petitioners)
5. The Hyderabad Cooperative Urban Bank Ltd. at 17-3-466,, Pari Mahal, Yakutpura, Hyderabad rep. by its Person Incharge, Manoj Kumar, s/o Anjaiah.
6. A.P. Cooperative Tribunal, Hyderabad, Represented by Chairman. (Respondent/Respondent No. 4 in Writ Petition)
7. The Cooperative Sub Registrar/Arbitrator, O/o. Divisional, Cooperative Officer, Charminal Division P.S. Nagar, Masabtank, Hyderabad. (Respondent/Respondent No. 3 in Writ Petition)
8. Wahaz Mirza, son of Mahmood Mirza, resident of 5-9-226/7-B,, Chirag All Lane, Abids, Hyderabad.

...RESPONDENTS/RESPONDENTS

WAMP. NO: 3277 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance of the order dated 22/9/2017 made in W.P.No. 12016 of 2007 pending disposal of the above appeal

Counsel for the Appellant:SRI. M A K MUKHEED

Counsel for the Re spondent Nos. 1 to 4: SRI.D MADHAVA RAO

Counsel for the Re spondent No. 6: SRI. K. JAGADISHWAR REDDY

Counsel for the Re spondent No. 7: GP FOR COOPERATION

Counsel for the Re spondent Nos. 5 & 8: NONE APPEARED

WA NO: 1712 OF 2)17

Writ Appeal nder clause 15 of the Letters Patent Appeal preferred against the order dated 22.09.2)17 passed in WPNo.9047/2007 on the file of the High Court.

Between:

Mohd Abdu ah Khan, Son of Mohd. Baquer Khan, Proprietor, M/s.New Footwear, S op No.5-8-607/1, Abids, Hyderabad, resident of 16-2-838, Baquer Bagh, Saida ad, Hyderabad.

...PETITIONER/APPELLANT

AND

1. The Hyderat ad Cooperative Urban bank Ltd., at 17-3-486, Pari Mahal, Yakutpura, H yderabad rep. by its Person Incharge, Manoj Kumar, s/o Anjaiah.
2. The Hyderal ad Cooperative Credit Society Limited., Represented by its President, S ed Hussain Aga, Son of Syed Aga, aged about 70 years, resident of Pari Mahal, Yakutpura, Hyderabad. (Respondents/Writ Petitioners)
3. A.P. Cooper rative Tribunal, Hyderabad, Represented by Chairman.
4. The Cooper tive Sub Registrar/Arbitrator, O/o Divisional Cooperative Officer, Charminal D vision, P.S. Nagar, Masabtank, Hyderabad.
5. Wahaz Mirz , son of Mahmood Mirza, resident of 5-9-226/7-B, Chirag Ali Lane, Abids, Hyde abad.

...RESPONDENTS/RESPONDENTS

WAMP. NO: 3279 OF 2017

Petition unt er Section 151 CPC pray ng that in the circumstances stated in the affidavit filed in s pport of the petition, the High Court may be pleased to stay all further proceedings in pursuance of the order dated 22/9/2017 made in W.P.No. 9047 of 2007 pending d sposal of the above appeal.

Counsel for the A ppellant:SRI. M A K MUKHEED

Counsel for the F espondent Nos. 1 & 2: M/S BHARADWAJ ASSOCIATES

Counsel for the F espondent No. 3: SRI. K JAGADISHWAR REDDY

Counsel for the F espondent No. 4: GP FOR COOPERATION

Counsel for the F espondent No. 5: NONE APPEARED

WRIT APPEAL N): 1714 OF 2017

Writ Appea under clause 15 of the Letters Patent appeal preferred against the order dt.22-09-20 7 passed in WP.No.9045 of 2007 on the file of the High Court.

Between:

Mohd. Abdullah Khan, Son of Mohd. Baquer Khan, Proprietor, M/s New Footwear, Shop No.5-8-907/1, Abids, Hyderabad, resident of 16-2-838, Baquer Bagh, Saifabad, Hyderabad.

...PETITIONER/APPELLANT

AND

1. The Hyderabad Cooperative Urban Bank Ltd. at 17-3-486, Pan Mahal, Yakutpura, Hyderabad rep. by its Person Incharge, Manoj Kumar, Anjaiah
2. The Hyderabad Cooperative Credit Society Limited,, Represented by its President, Syed Hussain Aga, Son of Syed Aga, aged about 70 years, resident of Pad Mahal, Yakutpura, Hyderabad. (Respondents/Writ Petitioners)
3. A.P. Cooperative Tribunal,, Hyderabad, Represented by Chairman.
4. The Cooperative Sub Registrar/Arbitrator,, o/o Divisional Cooperative Officer, Charminal P.S. Nagar, Masabtank, Hyderabad.
5. Wahaz Mirza., son of Mahmood Mirza, resident of 5-9-226/7-B, Chirag Ali Lane, Abids, Hyderabad.

...RESPONDENTS/RESPONDENTS

WAMP. NO: 3286 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in pursuance of the order dated 22/9/2017 made in W.P.No. 9045 of 2007 pending disposal of the above appeal.

Counsel for the Appellant:SRI. M A K MUKHEED

Counsel for the Respondent Nos. 1 & 2: M/S BHARADWAJ ASSOCIATES

Counsel for the Respondent No. 3: SRI. K JAGADISHWAR REDDY

Counsel for the Respondent No. 4: GP FOR COOPERATION

Counsel for the Respondent No. 5: NONE APPEARED

The Court delivered the following:

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

W.A.No.1680, 1681, 1682, 1695, 1696, 1701, 1711, 1712 and 1714 of 2017

COMMON JUDGMENT: (Per Hon'ble the Chief Justice Satish Chandra Sharma)

Regard being had to the controversy involved in the aforesaid cases, they were heard together and are being decided by a common judgment.

The facts of W.A.No.1680 of 2017 are reproduced as under:

W.A.No.1680 of 2017 is arising out of an order passed in W.P.No.8910 of 2007 which was decided by the learned Single Judge by a common order passed on 22.09.2017 in W.P.Nos.8910, 8911, 9044, 9045, 9047, 9084, 12014, 12015 and 12016 of 2007. The facts of W.P.No.8910 of 2007 reveal that the respondent No.1 herein/the Hyderabad Cooperative Urban Bank Limited (hereinafter referred to as, the Bank) incorporated under the provisions of the Andhra Pradesh Cooperative Societies Act, 1962, granted financial assistance to Mohd. Abdullah Khan, who is the appellant in the present writ appeal and who was one of the respondents in the writ petition preferred by the Bank and the Hyderabad Cooperative Credit Society Limited. Undisputedly, the loan amount was not repaid by Mohd.

Abdullah Khan and in those circumstances, proceedings were initiated under Section 61 of the Andhra Pradesh Cooperative Societies Act. An award was passed on 30.03.2002 and pursuant to the award, execution petition was preferred under Section 71 of the Andhra Pradesh Cooperative Societies Act read with Rule 52 of the Rules framed thereunder. The undisputed facts of the case further reveal that the appeal was preferred before the Andhra Pradesh Cooperative Tribunal at Hyderabad (hereinafter referred to as, the Tribunal) and finally the Tribunal has allowed the appeal by judgment dated 09.03.2007. In all the cases, the appeals were allowed in favour of the borrowers. It is noteworthy to mention that the property was sold, sale certificates were granted in the matter and the Bank thereafter preferred writ petitions challenging the order dated 09.03.2007 passed by the Tribunal. The writ petitions were also filed by the successive bidders in whose favour sale was confirmed and finally the learned Single Judge has allowed the writ petitions and set aside the award passed by the Tribunal dated 09.03.2007. The operative portion of the order passed by the learned Single Judge while allowing the writ petitions in favour of the Bank is reproduced as under:-

"8) Applying the above principles, if the borrower is allowed to raise the above referred technical pleas and seek to escape liability to pay money to the Bank which he admitted before the arbitrator, it would be a travesty of justice and it cannot be permitted. The Tribunal lost sight of this basic principle of justice and granted relief to the borrower by allowing his appeals accepting the hyper technical pleas raised by him, which have no merit.

8) For the aforesaid reasons, all the Writ Petitions are allowed; orders dt.09-03-2007 in C.T.A.Nos.86, 87, 88 of 2002 as well as C.T.A.Nos.89, 90 and 91 of 2006 are set aside; the sale confirmation orders dt.26-09-2006 in E.P.Nos.8, 9 and 10 of 2005 of the Dy. Registrar/Divisional Cooperative Officer, Charminar Division in favour of the petitioners in W.P.No. 2014, 12015 and 12016 of 2007 are declared as valid and enforceable; the sale certificates issued to the said petitioners pursuant to the said orders are held valid; and they are entitled to delivery of possession of the property mentioned therein from the borrower or other persons in possession thereof. No costs.

8) As a sequel, the miscellaneous petitions pending if any, shall stand closed."

The present appeals have been filed by the borrowers before this Court and the learned counsel appearing for the borrowers has straight away drawn the attention of this Court towards the judgment delivered by a Full Bench of this Court in the case of **M. Babu Rao and others v. Deputy Registrar of Co-operative Societies/Officer on Special Duty, Vasavi Co-op.**

Urban Bank Ltd., Malakpet, Hyderabad and others[1]. His contention is that in the light of the judgment delivered by the Full Bench of this Court, the action initiated under Section 61 of the Andhra Pradesh Cooperative Societies Act is a nullity and the Tribunal was not having jurisdiction in the matter. He has also argued before this Court that the debt due in the present case was more than Rs.10.00 lakhs and therefore, the only recourse available to the Bank was to file an application under the provisions of the Recovery of Debts and Bankruptcy Act, 1993. He has also placed reliance upon the judgment delivered by the Constitution Bench of the Hon'ble Supreme Court in the case of **Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Limited**[2] and his contention is that in the light of the aforesaid judgment also, the Bank could not have invoked the provisions under the Andhra Pradesh Cooperative Societies Act, 1964, and the entire action is null and void and hence, the order passed by the learned Single Judge deserves to be set aside.

On the other hand, learned counsel appearing for the Bank and the subsequent purchasers have placed reliance upon the judgment delivered in the case of

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[1] 2005 (4) ALD 582 (FB)
[2] (2020) 9 SCC 210

Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd. and others[3] and the contention of the learned Senior Counsel appearing in the matter is that in the light of the aforesaid judgment, the action initiated by the Cooperative Society does not warrant any interference and the learned Single Judge was justified in allowing the writ petition. It has also been argued that in the light of the Judgment delivered by the Hon'ble Supreme Court in the case of **Greater Bombay Coop. Bank Ltd.** (supra), the question of interference by this Court does not arise. It has also been argued before this Court that the subsequent judgment delivered by the Hon'ble Supreme Court in the case of **Pandurang Ganpati Chaugule** (supra) was a case arising out of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and therefore, the judgment does not help the appellant at all.

This Court has carefully gone through the judgment delivered on the subject by the Full Bench of this Court in **M.Babu Rao**'s case (supra). The Full Bench of this Court in paragraph 133 of the said judgment has held as under:-

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[3] (2007) 6 SCC 36

"133. On the analysis above, we conclude, declare and hold:

(a) That recovery of monies (whether called a debt, arrears or by any other name) due to a banking institution including a Co-operative Bank is a matter that integrally falls within the core and substantative area of the legislative field Banking in Entry-45, List-I of the Seventh Schedule of the Constitution.

(b) The above subject matter is therefore excluded from the State legislative field in Entry-32, List-II of the Seventh Schedule.

(c) Recovery of monies due to a Co-operative Bank is not a matter that falls within the incidental and ancillary areas of the State legislative field in Entry-32, List-II of the Seventh Schedule.

(d) A Co-operative Bank as defined in Section 5(cci) of the Banking Regulation Act, 1949 (as amended by Act 23 of 1965) is a *Bank* and a *Banking company* within the meaning of Section 2(d) and (e) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

(e) A Tribunal constituted under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 has exclusive jurisdiction, powers and authority to entertain and decide applications from a Co-operative bank for recovery of debts due to such bank, subject to the pecuniary limits of jurisdiction specified by or under the said Act.

(f) Section 71(1) of the 1964 Act in so far as it expressly confers power on the Registrar to issue a certificate for recovery of arrears of any sum advanced by a financing bank to its members, is beyond the legislative competence of the State.

(g) The words *'or financing bank'* in Section 71(1) of the Andhra Pradesh Co-operative Societies Act, 1964 expressly result in the provisions of the Section transgressing the State's legislative limits. These words being severable are therefore declared invalid.

(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.

(i) (a) No claim, application or other proceedings lodged or instituted before the Registrar, by a Co-operative Bank for recovery of the amount/debt due from a member or other person pursuant to advances made in the course of its banking business could be entertained or determined by the Registrar.

(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.

(j) During the pendency of these writ petitions, by virtue of various court orders certain amounts have been deposited by some of the writ petitioners. At no point of time these writ petitioners have disputed the liability of the amounts already deposited with the banks in pursuance of the orders of the Court. Therefore, we direct that the amounts deposited shall be retained by the concerned banks and adjusted against the liabilities, if any, that remain to be

determined pursuant to proceedings initiated by the respective banks in accordance with this judgment.

(k) In view of the declaration in this judgment, the respondent-banks are at liberty to proceed with the recovery of debts due to them, before the appropriate forum and under the appropriate law, in accordance with this judgment.

(l) As the proceedings initiated before the Registrar or any other authority under the 1964 Act were *bona fide* and as considerable time had been consumed in the litigation in this case also, the respondents-banks shall be entitled to set off the period spent in pursuing their claims before the Registrar or other Fora and before this Court, in computing the period for filing appropriate applications/claims before the appropriate authority/Tribunal.

In the considered opinion of this Court, keeping in view the judgment of the Full Bench, the action initiated by the Bank certainly deserves to be set aside, as it was only the Debts Recovery Tribunal, which was having jurisdiction in the matter keeping in view the definition of "bank" and "banking company" as defined under the Banking Regulation Act, 1949.

Learned Senior Counsel appearing for the Bank has argued that in the year 2009, the banking licence was cancelled.

The banking licence was cancelled in the year 2009, whereas action was initiated by the bank in the year 2002 and the matter was adjudicated by the Tribunal in

the year 2007. Therefore, the subsequent revocation of banking licence does not help the respondents 1 and 2 herein in any manner. Much has been argued by the learned Senior Counsel in the matter placing reliance on **Greater Bombay Coop. Bank Ltd.**'s case (supra). The Hon'ble Supreme Court in the said decision has held as under (paragraphs 96 and 97):-

> 96. None of the contentions of the learned counsel for the respondents supporting the judgments and orders of the High Courts impugned before this Court on the question of interpretation clause as well as the question of constitutional clause formulated hereinabove can be sustained.
>
> 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 Cooperative 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 cooperatives from their members."

The Hon'ble Supreme Court in the case of **Pandurang Ganpati Chaugule** (supra), which is the judgment delivered by the Constitution Bench, has dealt with the earlier judgment of the Supreme Court and paragraphs 120 and 142 of the aforesaid judgment read as under:

> "**120** In Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd. ((2007) 5 SCC 236), the provisions of the BR Act, 1949 were simply noted; there was no in-depth consideration of the various provisions and, more particularly of those contained in Section 56 of the Act. The main issue was whether the court had jurisdiction or Debts Recovery Tribunal to recover the amount from the debtor. In that connection, the question of application of RDB Act, 1993 to the co-operative societies constituted under MSCS Act as well as State Cooperative Acts arose and also whether the State legislature was competent to enact legislation concerning cooperative societies incidentally transacting the business of banking in the light of List II Entry 32. The findings were recorded on various aspects with which we are unable to agree. The discussion on various issues was not in depth, could not be said to be binding. We have dealt with the various questions with the help of various decisions of this Court, and we find ourselves unable to agree with the conclusions recorded therein. The cooperative banks are doing the banking business, it could not be said to be an incidental activity but main and only activity. We are unable to subscribe to the view taken in Greater Bombay Coop. Bank Ltd. (supra) as the provisions were not correctly appreciated.

142. Resultantly, we answer the reference as under:

142.1.(1)[a] The cooperative banks registered under the State legislation and multi-State level cooperative societies registered under the MSCS Act, 2002 with respect to "banking" are governed by the legislation relatable to Schedule VII List I Entry 45 of the Constitution of India.

142.1. (b) The cooperative banks run by the co-operative societies registered under the State legislation with respect to the aspects of "incorporation, regulation and winding up", in particular, with respect to the matters which are outside the purview of Schedule VII List I Entry 45 of the Constitution of India, are governed by the said legislation relatable to Schedule VII List II Entry 32 of the Constitution of India.

142.2. (2) The cooperative banks involved in the activities related to banking are covered within the meaning of "banking company" defined under Section 5(c) read with Section 56(a) of the Banking Regulation Act, 1949, which is a legislation relatable to List I Entry 45. It governs the aspect of "banking" of co-operative banks run by the cooperative societies. The cooperative banks cannot carry on any activity without compliance of the provisions of the Banking Regulation Act, 1949 and any other legislation applicable to such banks relatable to "Banking" in List I Entry 45 and the FBI Act relatable to Schedule VII List I Entry 38 of the Constitution of India.

142.3. (3)[a] The cooperative banks under the State legislation and multi-State cooperative banks are 'banks' under Section 2(1)[e] of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The recovery is an

essential part of banking; as such, the recovery procedure prescribed under Section 13 of the SARFAESI Act, a legislation relatable to Schedule VII List I Entry 45 to the Constitution of India, is applicable.

142.4. (3)(b) Parliament has legislative competence under Schedule VII List I Entry 45 of the Constitution of India to provide additional procedures for recovery under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with respect to cooperative banks. The provisions of Section 2(1)(c)(iv-a), of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, adding "*ex abundanti cautela*", "a multi-State co-operative bank" is not ultra vires as well as the Notification dated 28-1-2003 issued with respect to the cooperative banks registered under the State legislation."

The aforesaid paragraphs make it very clear that the Constitution Bench of the Hon'ble Supreme Court has held that the provisions of Banking Regulation Act, 1949, were simply noted in the case of **Greater Bombay Coop. Bank Ltd.** (supra) and there was no in-depth consideration of the various provisions and more so, particularly of those contained in Section 56 of the Act of 1949. In the aforesaid case, the Hon'ble Supreme Court has observed that *"we are unable to subscribe to the view taken in Greater Bombay Coop. Bank Ltd. (supra) as the provisions were not correctly appreciated."*

In view of the judgment delivered by the Constitution Bench of the Hon'ble Supreme Court in the case of **Pandurang Ganpati Chaugule** (supra), this Court is of the opinion that the action initiated under the Andhra Pradesh Cooperative Societies Act, 1964, was certainly a nullity and the Bank was having a remedy of filing an application under the Recovery of Debts and Bankruptcy Act, 1993.

Resultantly, as the proceedings were without jurisdiction, this Court is left with no other choice, except to set aside the order passed by the learned Single Judge.

Therefore, the writ appeals are accordingly allowed and the order passed by the learned Single Judge is hereby set aside.

The miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

SD/-M.SANTHI VARDHANI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Person incharge, Hyderabad Cooperative Urban Bank Ltd., at 17-3-486, Pan Mahal, Yakutpura, Hyderabad.
2. The Chairman, A.P. Cooperative Tribunal,, Hyderabac
3. The Deputy Registrar/Divisional Cooperative Officer, Charminal O/o Division, P.S. Nagar, Masabtank, Hyderabad
4. The Divisional Cooperative Officer, Charminal Division, P.S. Nagar Masabtank, Hyderabad.
5. One CC to Sri.M.A.K. Mukheed, Advocate [OPUC]
6. One CC to M/S. BHARADWAJ ASSOCIATES [OPUC]
7. One CC to Sri. D. Madhava Rao, Advocate [OPUC]
8. One CC to Sri. K. Jagadishwar Reddy, Advocate [OPUC]
9. One CC to Sri.T. Bala Mohan Reddy, Advocate [OPUC]
10. Two CCs to GP for Cooperation, High Court for the State of Telangana. [OUT]
11. Two CD Copies.

PM
SW

HIGH COURT

DATED:31/12/2021

COMMON JUDGM ENT

WA Nos: 1680, 16 1, 1682, 1695,
1696, 1701, 1711, 1712 & 1714 of 2017

Allowing the WA
Without costs.