IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.330 OF 2011

The Maharashtra State Co-operative Bank Ltd
Having its Registered Office at 9,
Maharashtra Chamber, Commerce Lance,
Mumbai – 23
Regional Office at Pay Office at Nanded,
Dist. Nanded, Through its Joint Manager
Bhimrao Motiram Rathod
Aged : 46 years, Occu : Service,
R/o. Nanded, Tq. & Dist. Nanded .. Petitioner

Versus

1. The Hon'ble Cabinet Minister
For Co-operation, Marketing and Textile Department,
Mantralaya, Mumbai.

2. The Liquidator / District Deputy Registrar /
Official Assignee Co-operative Oil
Industries Ltd, Latur, Tq. & Dist. Latur

3. The Divisional Joint Registrar,
Co-operative Societies, Latur,
Tq. & Dist. Latur .. Respondents

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Mr. R.N. Dhorde, Senior Counsel for the petitioner
Mr. S.R. Deshpande, Advocate for Respondent No.2
Mrs. Dube Anjali (Bajpai), Advocate for Respondent No.6
Mr. S.B. Yawalkar, AGP for Respondent Nos.1, 3 & 5

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WITH
CIVIL APPLICATION NO.1322 OF 2021
IN
WRIT PETITION NO.330 OF 2011
WITH
CIVIL APPLICATION NO.7053 OF 2016
IN
WRIT PETITION NO.330 OF 2011

WITH

WRIT PETITION NO.10027 OF 2015

The Maharashtra State Co-operative Bank Ltd
Having its Registered Office at Commerce Lance,
Mumbai
Regional Office at Pay Office at Nanded,
Dist. Nanded, Through its Assistant Manager
Hanumant Rakhmaji Bhor
Aged : 53 years, Occu : Service,
R/o. Pay Office, Nanded, Tq. & Dist. Nanded .. Petitioner

Versus

1. The Assistant Commissioner of Labour,
Latur, Dist. Latur

2. The District Deputy Registrar,
Co-operative Societies, Latur

3. Marathwada Sarva Shramik Sangthana
Branch Latur, Trade Union Center,
Latur
Through its Vice President,
Shri. S.D. Survase (Tatya)
Through Sau. Chhayabai Kashinath Kamble
& Other .. Respondents

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Mr. R.N. Dhorde, Senior Counsel for the petitioner
Mr. Parag Shahne, Advocate for Respondent No.2
Mrs. Dube Anjali (Bajpai), Advocate for Respondent No.3
Mr. S.B. Yawalkar, AGP for the Respondent – State

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CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.

RESERVED ON : 07-10-2022
PRONOUNCED ON : 14-10-2022

JUDGMENT (PER SANDEEP V. MARNE, J.) :

A. THE CHALLENGE

In these petitions, we are tasked upon to decide the competing claims of the Petitioner-Bank towards interest on credit facilities extended to the society which has gone in liquidation during period of its liquidation and that of the workers of that society for their unpaid wages. Since the amount available with the official assignee after monetization of assets of the society is limited, both parties stake priority for their respective claims over that amount. Petitioner-Bank challenges the order passed by State Government rejecting its claim for interest during period of liquidation of the society. It also challenges the order passed by the Assistant Commissioner of Labour sanctioning the amount of wages to 322 workers of the society. Both parties claim priority to receive the amount available with the official assignee.

B. FACTS IN WRIT PETITION NO. 330 OF 2011:

2. Latur Co-operative Oil Industries was a registered Co-operative Society (in short 'the society') under the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the 'Act of 1960'). The petitioner is an Apex Co-

operative Bank of the State of Maharashtra registered under the provisions of Banking Regulation Act, 1949, which finances *inter alia* other co-operative societies. In the year 1970, a midterm loan of Rs.30,00,000/- was sanctioned by the petitioner - Bank to Latur Co-operative Oil Industries, which mortgaged its properties bearing Old Survey No.134 (Revised Survey No.142) admeasuring 23 acres in Latur along with plant and machinery. On 16.05.1978 Latur Co-operative Oil Mill went into liquidation, when the outstanding amount due to petitioner-Bank was Rs.8,22,008/-. On 10.09.1997 the Society was revived, but unfortunately it again went in liquidation on 17.05.2002. Final liquidation order for the Society was passed on 18.12.2002.

3. The petitioner - Bank submitted its claim of Rs.1,83,69,943/- with the liquidator on 14.02.2003, which included

Principal amount	: 8,22,008/-
Interest during the period of revival of the society	: 11,05,871/-
Interest during first period of liquidation (1978-1997)	: 1,64,20,072/
Interest during second period of liquidation (17.05.2002-18.12.2002)	: 21,992/-

The claim was later revised to Rs.1,92,64,719.29 vide letter dated 16.10.2007.

4. By order dated 19.11.2007, the liquidator decided various claims and sanctioned amount of Rs.8,22,008/- towards principal and Rs.11,05,771/- towards interest during the period of revival of the society. The interest during the entire period of liquidation of the society was rejected. The petitioner - Bank accepted the total amount of Rs.19,27,879/- under the protest and submitted balance claim for Rs.1,73,36,840/- on 17.05.2008. In the meantime, the Divisional Joint Registrar, Latur passed order under Section 21 of the Act of 1960 deregistereing the Society. The District Deputy Registrar, Latur was appointed as official assignee and all the assets of the society were given in his possession.

5. For the first time on 16.01.2004, petitioner invoked provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Securitisation Act') and sent notice under Section 13 (2) to the liquidator. However, admittedly the petitioner - Bank did not pursue the remedy further under the Securitisation Act. Instead, it filed a revision petition before the State Government challenging the order dated 19.11.2007 passed by the liquidator to claim the remaining amount of interest. Since the revision petition was not being decided, Writ Petition No.5623 of 2009 was filed before this

Court and direction was issued by this Court on 26.08.2009 to decide the revision within six months. In the meantime, the revision petition was amended by the petitioner-Bank by challenging the order of de-registration dated 09.05.2008. By order dated 08.11.2010 the State Government was pleased to reject the revision petition filed by the petitioner - Bank. The order dated 08.11.2010 is the subject matter of challenge in the present petition.

6. At the time when the petition was filed it was averred that 23 acres of land of the Latur Oil Mill was still intact out of which 12.27 acres was without encroachment and 16.35 acres was under encroachment. In the meantime, by order dated 06.10.2008, the Commissioner of Co-operation and Registrar Co-operative Societies directed that land admeasuring 5-Hector, 46-Are be allotted for construction of buildings for government hostel and Dr. Babasaheb Ambedkar Samajik Nyaya Bhavan, Latur at ready reckoner value of Rs.20,37,60,000/-. By amending the petition, the petitioner - Bank has sought relief for payment of Rs.1,73,778/- out of the amount sanctioned by order dated 06.10.2008.

7. As per the order of this Court dated 08.06.2018 Marathwada Sarva Shramik Sanghatana Latur, espousing the cause of 332 workers

of the Society before Assistant Commissioner of Labour was directed to be impleaded as a party respondent to Writ Petition No.330 of 2011. The Court also directed to deposit of amount of Rs.1,11,83,153/-, representing wages of the workers to be invested in Fixed Deposit. Accordingly, the amount came to be deposited by the Official Assignee on 28.06.2018.

8. For the sake of convenience, the prayers and amended prayers in the petition are reproduced as under:

> 'B) Issue writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari for quashing and setting aside the order dated 08.11.2010, passed by the Hon'ble Cabinet Minister for Co-operation, Marketing and Textile Department, Mantralaya, Mumbai in Revision No.225 of 2009 and for that purpose issue necessary orders.
>
> BB) Hold an declare that the order dated 09.05.2008, passed by the respondent no.3 deregistering the Latur Co-operative Oil Industries Ltd and order dated 08.11.2010, passed by the respondent no.2 – Hon'ble Minister confirming the order dated 19.11.2007, are illegal, arbitrary and violative of Articles 14, 19 (1)(b) and therefore, the same are liable to be quashed and set aside and for that purpose issue necessary orders.
>
> BBB) Issue writ of mandamus or any other appropriate writ, order of direction in the nature of mandamus directing the respondent no.2 to decide the representation dated 29.4.2011 and pay the amount as per Rule-91 and for that purpose issue necessary orders order.
>
> BBBB) Direct the respondents herein to pay the petitioner's dues from the amount received Rs.1,73,68,778/- as per order dated 06.10.2008 passed by Commissioner to the present petitioner bank with interest till this date and for that purpose issue necessary orders.

BBBBB) Quash and set aside the impugned order dated 06.10.2008 and 28.11.2008 passed by the respondent no.5 Commissioner of Co-operative Societies and for that purpose issue necessary orders.

C) Pending hearing and final disposal of this Writ Petition, grant stay to the order dated 08.11.2010, passed by the Hon'ble Cabinet Minister for Co-operation, Marketing and Textile Department, Mantralaya, Mumbai in Revision No.225 of 2009 and for that purpose issue necessary orders.

CC) Pending hearing and final disposal of this Writ Petition, grant stay to the order dated 09.05.2008, passed by the respondent no.3 deregistering the Latur Co-operative Oil Industries Ltd and for that purpose issue necessary orders.

CCC) Pending hearing and final disposal of the Writ petition stay to the order dated 06.10.2008 and 28.11.2008 passed by the respondent no.5 Commissioner of Co-operative Societies.

D) Pending hearing and final disposal of this Writ Petition, grant an injunction restraining the respondent no.2, its officers or subordinates from selling, alienating, transferring or creating any third party interest in Survey No.142 of Latur (Old survey No.134) admeasuring 23 Acres, the properties.

E) Grant an ad-interim relief in terms of prayer Clause "C" and "D".

C. FACTS IN THE WRIT PETITION NO.10027 OF 2015

9. 332 workers of the Society had filed application before Assistant Commissioner of Labour (hereinafter referred to as the 'ALC') claiming unpaid wages. By order dated 30.05.2009, the ALC allowed their claims and directed payment of Rs.1,07,44,598/-. The

Official Assignee filed Writ Petition Nos.1034 of 2010, 3660 of 2010 and 2830 of 2010 challenging the order dated 30.05.2009. The petitions were allowed setting aside the order dated 30.05.2009 and the ALC was directed to redecide the entire issue.

10. Apprehending that the claim of Petitioner-Bank would be frustrated on account of claim of wages for labourers, it filed Civil Application No.7537 of 2012 in Writ Petition No.330 of 2011 in which order was passed on 28.01.2014 directing the Official Assignee not to deal with the balance sale proceeds and with the remaining land of the society.

11. By order dated 08.07.2014, the ALC passed order directing payment of wages of the employees amounting to Rs.43,85,550/- along with interest of Rs.63,59,048/-, total amount being Rs.1,07,44,598/-. In the meantime, in Writ Petition No.330 of 2011, the Official Assignee filed Civil Application No.7063 of 2014 bringing to the notice of this Court the order passed by the ALC. This Court passed order dated 12.09.2014 directing ALC to hear all the parties afresh and to decide the matter. It appears that thereafter the evidence was led by workers and Official Assignee. The ALC passed order dated 28.02.2015 once again allowing the claim of the workers

for payment of wages to 322 workers during the period from 1989 to 2000 along with interest. The petitioner - bank has challenged the order dated 28.02.2015 passed by the ALC in the present petition under an apprehension that if the workers are paid their dues, the claim of the petitioner - bank would be frustrated. As observed earlier, this Court directed deposit of amount of Rs.1,11,83,153/- representing wages of workers to be invested in Fixed Deposit. Accordingly, the amount came to be deposited by the Official Assignee on 28.06.2018.

12. For the sake of convenience, the prayers in Writ Petition No.10027 of 2015 are reproduced herein below:

> ‘B) Quash and set aside the impugned order dated 28.02.2015 passed by the Respondent No.1 – Assistant Commissioner of Labour, Latur in Application No.1/2013 to 322/2013 and for that purpose issue necessary orders.
>
> C) Pending the hearing and final disposal of this Writ Petition grant stay to the impugned order dated 28.02.2015 passed by the Respondent No.1 Assistant Commissioner of Labour, Latur in Application No.1/2013 to 322/2013 and for that purpose issue necessary orders.
>
> D) Grant an ad-interim relief in terms of prayer Clause “C”.’

We are thus tasked upon to decide the competing claims of the petitioner - bank and the workers in respect of the amount deposited in this Court.

D. Submissions On Behalf Of Petitioner Bank

13. Mr. Dhorde, the learned Senior Advocate appearing for the petitioner - Bank would submit that denial of interest to it during the period of liquidation is arbitrary. He would first rely upon the provisions of the Rule 91 of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as the 'Rules of 1961') and submit that under Proviso to Rule 91 the petitioner - bank is entitled to be paid the entire amount of interest by monitising the surplus assets of the society. Inviting our attention to the order dated 09.05.2008 passed by the Divisional Joint Registrar, he would submit that there is still 12.27 acres of un-encroached land is available right in the heart of city of Latur, having high value, which is not being monitised by the Official Assignee. He would then rely on the provisions of Section 13 of the Securitisation Act, particularly definition of expression 'outstanding amount' to buttress his contention that the entire amount of interest is covered by the expression 'outstanding amount' and that therefore the petitioner bank cannot be denied the amount of interest during the period of liquidation. He would also rely upon the notice issued by the bank under the provisions of Section 13 (2) of the Securitisation Act to contend that the petitioner-bank has invoked the provisions of the

Securitisation Act.

14. Mr. Dhorde would also submit that the provisions of Securitisation Act would prevail over the provisions of the Act of 1960 and for that the purpose he relies upon the judgment of this Court in **Marathwada Gramin Bank** *Vs.* **The Maharashtra State Cooperative Bank Ltd and Ors,** 2007 (1) ALL MR 500. He also relies on the decision of this Court in **M/s. Asha Oil Foods Pvt. Ltd** *Vs.* **The Jalgaon Janta Sahakari Bank Ltd and Ors,** 2005 (2) ALL MR 721.

15. Mr. Dhorde would further submit that the claim of the petitioner bank would have priority over the claim of the employees for wages. Relying upon the provisions of clause (e) of sub-section (1) of Section 105 of the Act of 1960, Mr. Dhorde would contend that the official liquidator was required to decide priority of claims of all the creditors, which he has failed to do. He would rely upon the decision of this Court in **Maharashtra State Cooperative Bank Limited** *Vs.* **Babulal Lade and Others**, 2020 (2) SCC 310 to contend that merely because the employees dues are recoverable as arrears of land revenue under the provisions of Maharashtra Land Revenue Code, such dues cannot be treated as a paramount charge in terms of Section 169 (1) of the Maharashtra Land Revenue Code and that they

would take precedence only over unsecured claims under Section 169 (2) of the Code.

16. In Writ Petition No.10027 of 2015, Mr. Dhorde would contend that the employees had failed to raise any claim before the liquidator and that therefore, ALC committed an error in deciding the claims of the workers after the society went into liquidation. He would submit that the claims raised by the workers before ALC were vague. They had not produced their appointment orders or the exact period of employment. By taking us through the order passed by the ALC, Mr. Dhorde would contend that the reasons recorded by the ALC are erroneous and in absence of any records, the ALC ought to have rejected the claims of the workers.

17. Mr. Dhorde refutes the objection of *locus standi* of the Bank in challenging ALC's order contending that by virtue of order dated 12.09.2014 passed in Civil Application No.7063 of 2014 filed in Writ Petition No.330 of 2011, the petitioner bank gained locus to intervene in the dispute between the workers and the Official Assignee.

E. SUBMISSIONS ON BEHALF OF THE OFFICIAL ASSIGNEE

18. Appearing for the Official Assignee, Mr. Deshpande the learned Counsel opposes Writ Petition No.330 of 2011 relying on the provisions of Rule 91 of the Rules of 1961. Mr. Deshpande would contend that the petitioner - bank is not entitled to any interest during the period of liquidation of the society. He would submit that the petitioner bank, having extended the credit facilities way back in the year 1970 did not get its claim adjudicated from any Court or authority till date. He would submit that there is neither any adjudication under Section 91 by Cooperative Court nor any recovery certificate has been issued under Section 101 of the Act of 1960 in favour of the petitioner.

19. Referring to the provisions of Section 36 of the Securitisation Act, Mr. Deshpande would contend that if any claim was to be raised by the petitioner bank under the Securitisation Act, the same would have been barred by limitation as the bank was seeking to enforce its claim of the year 1970. Referring to the notice dated 06.01.2004 issued by the petitioner bank under Section 13 (2) of the Securitisation Act, Mr. Deshpande would contend that the petitioner bank failed to take any further steps in pursuance of the notice under Section 13 (2). Therefore no occasion arose for Official Assignee to challenge the claim of the petitioner bank, as the remedy

under Section 17 of the Act could be exercised only after taking steps under Section 13 (4). He would also rely upon the provisions of Article - 62 of the Limitation Act to contend that on account of passage of period of 12 years, the claim of the petitioner bank was otherwise barred by limitation.

20. Mr. Deshpande has also taken us through various reports of the auditors to buttress his claim that the liquidator has satisfied the claims of the petitioner bank from time to time. He would submit that after sale of 73 plots of the society, an amount of Rs.1,42,93,483/- was paid to the petitioner bank towards its claim. He would also rely upon the Auditors Report dated 17.11.2018 to demonstrate that the auditor had recorded a finding that the petitioner bank has recovered excess amount from the assets of the society. He would submit that all the remaining assets of the society are in litigation or encroachment. He would submit that there are several other outstandings to be cleared by the Official Assignee including the claim of the wages of workers. He would therefore submit that there are no surplus assets available with the Official Assignee to satisfy any further claim of the petitioner bank.

F. SUBMISSIONS ON BEHALF OF THE STATE GOVERNMENT

21. Mr. Siddhartha Yawalkar, the learned Additional Government Pleader appearing for the State Government would contend that the Proviso to Rule 91 of the Rules of 1961 would take effect only after all the liabilities are paid off. He would submit that the petitioner has failed to bring on record any material to show that all the liabilities have been paid off. Since the provisions of Rule 91 clearly deny interest during the period of liquidation of the society, the order passed by the State Government is perfectly valid. Referring to the provisions of Securitisation Act, Mr. Yawalkar would contend that the step to be taken under Section 13 (4) is an important step and in absence of such a step being taken, mere issuance of notice under Section 13 (2) is of no avail. He would therefore submit that by not taking any further action under Section 13 (4) of the Securitisation Act, the petitioner bank abandoned its rights, if any, under the Securitisation Act.

G. SUBMISSIONS ON BEHALF OF WORKERS

22. Mrs. Anjali Dube – Bajpai, learned Counsel appearing for the workers union would support the order passed by the ALC. She would submit that the workers would have a prior claim towards their wages over the alleged claim on the petitioner bank. She would submit that the workers are not interested in the disputes between

the petitioner bank and the Official Assignee and that if the workers are paid their dues, the workers do not wish to oppose the claim of the petitioner bank. She would submit that the amount of dues of workers has already been deposited in this Court and that they should be permitted to withdraw the same. Mrs. Dube - Vajpai would also question *locus standi* of the petitioner to challenge the order passed by the ALC.

H. SUBMISSIONS ON BEHALF OF DISTRICT DEPUTY REGISTRAR

23. Mr. Parag Shahane, learned Counsel appearing for the District Deputy Registrar of Co-operative Societies would question the *locus standi* of the petitioner bank to challenge the order passed by the ALC. He would submit that the petitioner bank was not a party to the proceedings before the ALC and therefore it cannot question ALC's order. Referring to the objections filed by the petitioner bank before the ALC, Mr. Shahne would submit that the petitioner bank had not even opposed workers dues before ALC and had merely sought relief against the Official Assignee for recovery of the amount due to the bank by way of the sale of mortgaged property. He would submit that the order passed by this Court on 12.09.2014 cannot be construed to mean that jurisdiction was conferred upon the ALC to decide the claims / objections raised by the petitioner bank.

I. Issues For Determination

24. After recording the factual matrix and the submissions made by the learned Counsel appearing for the respective parties, following issues arise for our determination:

(A) Whether petitioner bank has *locus standi* to challenge the order passed by ACL directing payment of dues of workers?

(B) Whether petitioner bank is entitled to claim interest during the period of liquidation of the society?

(C) Whether petitioner bank is entitled to unpaid amount of interest during liquidation from surplus assets, if any, available with Official Assignee?

(D) Whether in absence of any further step being taken by the petitioner bank under Section 13 (4) of the Securitisation Act, the notice issued by it under Section 13 (2) would protect its claim towards interest even during period of liquidation by treating it as 'amount outstanding' under explanation (b) to sub-section (9) of the Section 13 of the Securitisation Act?

(E) Whether petitioner bank can rely upon the provisions of Securitisation Act for the purpose of pressing its claim by exercising remedy under the Act of 1960?

(F) Who will have priority over amount available with the official liquidator- Petitioner bank or workers?

J. Analysis And Reasons

25. This is a unique case where two unconnected issues of petitioners claim for interest towards loan advanced by it to the liquidated society and worker's claim for wages are intermingled. The

two distinct issues have got interlinked as the funds generated through sale of properties of the liquidated society are limited and there are competing claims of petitioner bank and workers against those funds. The issues also got interlinked on account of the order passed by this Court in Writ Petition No. 330 of 2011 directing deposit of amount of Rs.1,11,83,153/- representing dues of the workers. Be that as it may. Since both the petitions were tagged together, we have heard them together and proceed to decide them by this common judgment by answering each of the issues that we have determined hereinabove.

J.1 *ISSUE: A*

26. *Locus standi* of the petitioner to challenge the order of ALC directing payment of wages to workers by the Official Assignee is questioned both by Mrs. Dube-Vajpai and Mr. Shahane. Admittedly, petitioner bank was not, nor could have been a party to the proceedings filed before the ALC and therefore in normal circumstances there was no reason for it to challenge the order passed by the ALC. Therefore one would have easily arrived at a conclusion that Petitioner-bank cannot have locus to challenge ALC's order. However Petitioner seeks to derive *locus* from order passed by this Court on 12.09.2014 in Civil Application No.7063 of 2014 filed

in Writ Petition No.330 of 2011. Mr. Dhorde has contended that by that order, this Court had permitted the petitioner to participate in the hearing before ALC and having participated in such a hearing, the petitioner has every right to challenge its order.

27. To examine the contention raised by Mr. Dhorde, it would be necessary to first consider the objections raised and prayers made by the petitioner bank before ALC. In his objection - application dated 27.11.2014 filed before ACL, the petitioner bank made following prayer:

> *'By allowing this application the respondents no.1 and 2 may kindly be directed to recover the due amount of the bank by way of sale of the mortgaged property of the co-operative oil industries on priority basis and oblige.'*

28. Thus, petitioner bank did not question the entitlement of the workers to the wages before the ALC in any manner. We have also gone through the entire application dated 27.11.2014 filed by petitioner bank. Beyond claiming priority of its own claim, it did not challenge workers' entitlement s to salary. Though the petitioner-bank brought it to the notice of the ALC that the workers did not raise any claim before the liquidator, the factum of employment of workers or their entitlement to wages for a particular period was not, in any manner, questioned by it. Rather it merely pressed its own claim

before ALC in its application dated 27.11.2014. It is difficult to comprehend as to how the ALC could have given a direction to the Official Assignee to pay the alleged dues of the bank. Its prayer in that application was therefore inconceivable. Be that as it may. It is a fact that the entitlement of the workers to salary was not questioned by it before ACL. This is the first ground on which it cannot now be permitted to challenge validity of ALC's order.

29. Coming back to the issue of locus of the petitioner to challenge the order passed by the ALC, we find that reliance of Mr. Dhorde on the order passed by this Court on 12.09.2014 is completely misplaced. It is trite that conferment of jurisdiction is the legislative function and it can neither be conferred with consent of the parties nor by a superior court. ALC undeniably has no jurisdiction to decide prayer made by Petitioner before him. Therefore, if the petitioner bank did not have any *locus* to intervene in the dispute relating to payment of wages between the workers and the Official Assignee, mere passing of order by this Court permitting it to be heard in the proceedings would not mean that the petitioner bank acquired any locus, which it lacked from the beginning. We may make profitable reference in this regard to the decision of the Apex Court in **Dr. Jagmittar Sain Bhagat vs Director Health Services,**

Haryana, (2013) 10 SCC 136 , in which it is held in para 7 as under:

> ‘7. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court / Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: United Commercial Bank Ltd. v. Their Workmen, AIR 1951 SC 230; Smt. Nai Bahu v. Lal Ramnarayan & Ors., AIR 1978 SC 22; Natraj Studios (P) Ltd. v. Navrang Studios & Anr., AIR 1981 SC 537; and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors., AIR 1999 SC 2213).’

30. Even otherwise, after hearing Mr. Dhorde at length, he finally concedes to the position that as long as the claim of the petitioner bank is satisfied, it is not really interested in contesting the entitlement of the workers to the wages. The petitioner bank had advanced credit facilities to the liquidated society and it has absolutely no right to participate in the proceedings filed before ALC for deciding entitlement of workers to their wages. The only party entitled to challenge the order passed by the ALC was the official assignee, which has admittedly not questioned that order. Therefore, between official assignee and the workers, the order has attained

finality. We would not permit that order to be questioned by the petitioner Bank which has absolutely no locus standi in the matter. We therefore hold that the petitioner bank does not have any *locus standi* to challenge the order passed by the ALC. Therefore, Writ Petition No.10027 of 2015 filed by the petitioner bank deserves to be dismissed on this ground without going into the merits of challenge to ALC's order passed.

J.2. *ISSUE: B*

31. Petitioner bank has already been paid the principal amount of Rs.8,22,008/-. It has also been paid an amount of Rs.11,05,781/- towards interest during the period of revival of the society. All that remains is the interest payable during the period of liquidation. Both the writ petitions have been filed by the petitioners essentially to recover the amount towards interest during liquidation from the assets of the liquidated society. To decide the issue, we straightway refer to the provisions of Rule 91 of the Rules of 1961, which is reproduced thus:

> '**91. Interest on amounts due from a society under liquidation**.
>
> The creditor of a society, which is being wound up may apply to the Liquidator for payment of interest on any debt due from the society up to the date of the Registrar's order for winding up. The rate at which interest

> shall be paid shall be in the case of the Maharashtra State Co-operative Bank or a Co-operative Bank permitted by the Registrar to finance societies, the contact rate and in any other case the rate which may be fixed by the Registrar which shall not exceed the contract rate:
>
> **Provided** that, if any surplus assets remain after all the liabilities, including liabilities on shares, have been paid off. Further interest on such debts at a rate to be fixed by the Registrar but not exceeding the contract rate may be allowed to the creditors from the date mentioned above up to the date of the repayment of the principal.'

32. Thus under Rule 91, interest can be claimed only upto the date of Registrar's order for winding up. For further interest after the date of winding up, the provision is to be found in Proviso to Rule 91. After placing reliance on the provisions of Rule 1991, Mr. Dhorde fairly concedes that the petitioner bank could not have been paid interest during the period of liquidation by liquidator. He would therefore place reliance on the Proviso to contend that there are surplus assets available with the Official Assignee from which petitioner bank's claim for further interest can easily be satisfied. This is a separate issue, which we will deal with later. So far as the entitlement of the petitioner for interest during the period of liquidation is concerned, we are of the view that the petitioner bank is not entitled to payment of interest during the period of liquidation by raising a claim before liquidator. To that extent, the order passed by the liquidator on 19.11.2007 as well as the order passed by the

State government on 08.11.2010 upholding the order of liquidator cannot be found faulted with.

J.3 *ISSUE: C*

33. The petitioner-bank is claiming that the Official Assignee has surplus assets. It is deprived of the amount of interest during the period of liquidation. We have gone through the affidavits filed by the respondents in Writ Petition No.330 of 2011 and find that as of now it is difficult to reach to a conclusion that all the liabilities of the liquidated society have been paid off and that the assets that still remained in possession of the Official Assignee can be treated as 'surplus assets'. There are disputed questions of facts. The Official Assignee has given details of litigations pending in respect of various landed properties of the liquidated society. There appears to be several other claims pending with the Official Assignee. In such a situation, we cannot, at least for now, hold that there are any surplus assets available with the Official Assignee so as to consider Petitioner's claim under proviso to Section 91. However as and when all the liabilities are paid off by the Official Assignee, it would be open for the petitioner to raise a claim before Official Assignee for payment of further interest as provided for in proviso to Rule 1991.

J.4 *ISSUE 'D' &'E'*

34. Issues 'D' and 'E' are interlinked and can be decided together. Having faced with the difficulty of provisions of Rule 91 of the Rules of 1961 under which the petitioner bank is not entitled to interest during the period of liquidation from non-surplus assets, Mr. Dhorde has sought to place reliance on the provisions of Securitisation Act to contend that the entire amount due it becomes 'outstanding amount' within the meaning of explanation (b) sub - section (9) of Section 13 of the Securitisation Act. For this he would rely upon the notice issued by the petitioner bank under Section 13 (2) of the Act on 06.01.2004 to the liquidator. He has contended that once the notice under Section 13 (2) of the Act is issued, the entire amount due to the Bank became 'outstanding amount' which would include even interest during liquidation.

35. We find the contentions of the petitioner bank in this regard to be totally misplaced. The petitioner bank has exercised remedy under the Act of 1960 by challenging the order of liquidator dated 19.11.2007 before the State Government by filing revision under Section 154 of the Act of 1960. Having invoked the remedy under the Act of 1960 it would not be open to it to simultaneously buttress his claim under the Securitisation Act. There is a separate remedy created under the Securitisation Act for determining claims

arising out of that Act. Admittedly, the petitioner has not availed of the remedy under the Securitisation Act. It has in fact not even taken steps under Section 13 (4) of the Act of 1960 after issuance of the notice under Section 13 (2). Having taken recourse to the remedy under the Act of 1960 the petitioner cannot rely upon the provisions of the Securitisation Act. The liquidator or the State Government while deciding the claim of the petitioner under the provisions of Act of 1960 and the Rules of 1961 could not have taken into consideration the provisions of the Securitisation Act as they do not have any jurisdiction to do the same.

36. We are called upon to decide the correctness of the order passed by the liquidator and the State government passed under the Act of 1960. To decide correctness of those orders, provisions of Securitisation Act are irrelevant. There is a specific bar of jurisdiction under Securitization Act. Petitioner cannot be permitted to utilize forum under one enactment and seek to rely upon another enactment as per its convenience. We, therefore, decide the issue 'D' and 'E' against the petitioner.

J.5 *ISSUE F*

37. Since we have held that the Petitioner-bank is not entitled to

interest during the period of liquidation, at this stage and have also held that it has no *locus standi* to challenge the order of ALC, this issue has become redundant. Consequently, the amount deposited by official assignee with this court shall have to be utilized towards wages of workers.

K. CONCLUSION

38. Having answered all the issues, which we have formulated for determination, the inescapable conclusion that emerges is that the order passed by the liquidator on 19.11.2007 as well as the order passed by the State government on 08.11.2010 denying interest to the Petitioner-bank during period of liquidation of the society deserve to be upheld. Order passed by ALC determining entitlement of workers to wages has attained finality and is required to be implemented, for twin reasons of lack of *locus standi* of the Petitioner-bank to challenge the same as well as due to non-challenge by the official assignee. Consequently, we proceed to pass the following order:

L. ORDER

(i) Writ Petition No.330 of 2011 is dismissed and the orders passed by the liquidator on 19.11.2007 and by State

Government on 08.11.2010 are upheld. However, in the event of any surplus assets being available with the Official Assignee after payment of all liabilities, the petitioner bank will have liberty to raise a claim before Official Assignee for payment of interest during the period of liquidation under the Proviso to Rule 91 of the Rules of 1961.

(ii) Writ Petition No.10027 of 2015 filed by the petitioner bank is dismissed. The amount of Rs.1,11,83,153/- deposited in this Court in pursuance of the order dated 08.06.2018 along with accrued interest be released in favour of the Official Assignee for implementation of the order dated 27.02.2015 passed by the Assistant Commissioner of Labour, Latur.

(iii) There shall be no order as to costs.

(iv) Pending Civil Applications stand disposed of.

(SANDEEP V. MARNE, J.) **(MANGESH S. PATIL, J.)**

Later on :

39. After pronouncement of the judgment, the learned advocate Mr. S.V. Bhopi h/f. Mr. R.N. Dhorde, learned Senior advocate for the petitioner submits that interim relief may be continued for a period of eight weeks to enable the Bank to approach the Supreme

Court.

40. The only interim relief which we could trace by way of an order dated 28.01.2014 in Civil Application No. 7537 of 2012 in Writ Petition No.330 of 2011 wherein the respondent no.2 - liquidator was prevented from dealing with the balance of sale proceeds and remaining land of the society till the returnable date i.e. 25.02.2014. Considering the view which we have taken while dismissing the writ petition, the request is rejected.

(SANDEEP V. MARNE, J.) **(MANGESH S. PATIL, J.)**

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GGP