IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 691 OF 2022

1) Viren Foods and Beverages Pvt. Ltd.,
through its Director Atul Madhukarrao
Raipure, Aged about 41 years,
Occupation – Business,
R/o Shastri Nagar, Prashantul Building,
Near New Jain Mandir, Akola, Tahsil
and District Akola.

2) Prashant Madhukarrao Raipure,
Director of Viren Foods and Beverages
Pvt. Ltd.

3) Atul Madhukarrao Raipure,
the Director of Viren Foods and
Beverages Pvt. Ltd.,
R/o Shastri Nagar, Prashant Building,
Near New Jain Mandir, Akola, Tahsil
and District Akola. .... **PETITIONERS**

VERSUS

1) State of Maharashtra,
through the Secretary, Co-operation,
Marketing and Textile Department,
Mantralaya, Mumbai-32.

2) Assistant Registrar of Cooperative
Societies, Nagpur.

3) Pusad Urban Co-operative Bank Ltd.,
Pusad, a society registered under the
Maharashtra Co-operative Societies Act,
1960 and also an Urban Co-operative
Bank, through its Recovery Officer,
Pusad. **....** **RESPONDENTS**

Dr. Mrs. R.S. Sirpurkar, Counsel for the petitioners,
Ms. T.H. Khan, A.G.P. for respondents 1 and 2,
Mr. A.N. Vastani, Counsel for respondent 3.

CORAM : ROHIT B. DEO, J.
DATED : 11th APRIL, 2022

ORAL JUDGMENT :

Petitioner 1 is a Company incorporated under the Companies Act and petitioners 2 and 3 are its Directors.

2. Respondent 3 is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 (Act of 1960), which is engaged in banking business.

3. Petitioners availed cash credit facility and term loan and mortgaged their properties with respondent 3-bank as security.

4. The account went red and the bank initiated recovery proceedings under the Act of 1960 and the Secularisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The petitioners contend that the bank could not have taken recourse to proceedings under the Act of 1960 and SARFAESI Act parallelly and appropriate objections are raised in the

fora, which is in seisin of the proceedings under the Act of 1960.

5. The petitioners have then referred to the earlier rounds of litigation *inter alia* Writ Petition 1510/2020 which is filed challenging the order dated 09-3-2020 passed by the Tahsildar, Akola pursuant to the directions issued by the competent authority to take possession of the properties under Section 14 of the SARFAESI Act. It is then averred that while this Court protected the possession vide order dated 17-3-2020, the bank continued with the parallel recovery proceedings under the Act of 1960 and secured recovery certificate under Section 101 thereof. The petitioners challenged the recovery certificate in revision, which was not entertained since the statutory pre-deposit of 50% of the dues was not made. The bank went ahead with the recovery and issued public notice on 24-6-2021 inviting bids for auction sale of the properties of the petitioners. The petitioners preferred several objections to the auction sale *inter alia* to the valuation of the property, which the bank did not consider, and the petitioners were constrained to approach the civil court in which the issue of maintainability arose. The petitioners approached this Court challenging the decision on maintainability, which petitions were subsequently withdrawn.

6. The present petition is filed seeking the following reliefs :

> *"(A) Declare the action of the respondent bank to initiate the recovery proceeding under the Maharashtra Cooperative Societies Act, as illegal and without jurisdiction.*
>
> *(B) Quash and set aside the public notice dated 08-1-2022 (Annexure-6) issued by the respondent bank regarding the public re-auction of the properties of the petitioners.*
>
> *(C) Stay the effect and operation of public notice dated 08-1-2022 (Annexure-6) issued by the respondent bank in respect of re-auction of the properties of the petitioner.*
>
> *(D) Grand ad interim ex parte relief in terms of prayer clause (D) above.*
>
> *(E) Allow the petition and grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of this present case and saddle the cost on the respondents."*

7. The singular submission, which is canvassed with utmost seriousness, is that in view of the Constitution Bench decision of the Hon'ble Supreme Court in ***Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Limited, (2020) 9 SCC 215,*** respondent 3-bank is precluded from availing the recovery mechanism under the Act of 1960.

8. Dr. Mrs. R.S. Sirpurkar would submit that respondent 3-bank is covered within the meaning of 'banking company' as defined under Section 5(c) read with Section 56(a) of the Banking Regulation Act, 1949 (BR Act), and therefore, in view of the decision of the

Constitution Bench in *Pandurang Ganpati Chaugule* (supra), recourse shall have to be taken to the provisions of the SARFAESI Act and the Recovery of Debts Due to Banks Financial Institutions Act, 1993 (RDBFI Act). The extension of the submission is that there cannot be parallel remedy and the fora under the Act of 1960 would not have the jurisdiction to entertain recovery proceedings. Dr. R.S. Sirpurkar would argue that while the recovery certificate under Section 101 of the Act of 1960 was issued in 2018, there is a sea change in the position of law. It is submitted that prior to the judgment in *Pandurang Ganpati Chaugule* (supra) there was no occasion for the petitioners to object to the recovery proceedings under the Act of 1960. The rest of the submissions advanced by Dr. Mrs. R.S. Sirpurkar touch factual aspects, which I am not inclined to adjudicate on merits.

9. In rebuttal, the learned Counsel for respondent 3-bank Mr. A.N. Vastani would argue, that it is wholly unnecessary to delve deeper in the broad questions of law which fell for consideration in *Pandurang Ganpati Chaugule* (supra), inasmuch as the said decision on which the petitioners are heavily relying, unequivocally articulates that it is open for the co-operative bank to take recourse to the remedies under the Act of 1960.

10. In the context of the rival submissions, It would be necessary to briefly touch the factual backdrop of the Constitution Bench decision which considered the scope of the legislative field covered by List 1 Entry 45 "banking" and Schedule VII List II Entry 33 of the Constitution of India. The specific question considered by the Constitution Bench decision was the applicability of the SARFAESI Act to co-operative banks.

11. The Full Bench decision of this Court in ***Narendra Kantilal Shah vs. Joint Registrar, Co-operative Societies (Appeal), Bombay and others, 2004(1) Mh.L.J. 704*** which held that the term "banking company" also includes co-operative bank within the meaning of Section 2(d) of the RDBFI Act, was set aside by the Hon'ble Supreme Court in ***Greater Bombay Co-op. Bank Ltd. vs. United Yarn Tex. (P) Ltd., (2007) 6 SCC 236***. The Hon'ble Supreme Court held that the co-operative banks established under the Act of 1960 which transact business of banking are not covered by the term "banking company" as defined in Section 5(c) of the BR Act and the provisions of the RDBFI Act do not apply to the recovery of dues by co-operative banks from their members. In *Pandurang Ganpati Chaugule* (supra), the Constitution Bench articulated thus :

> *"66. In our opinion, Section 6 deals with the forms of business in which banking companies may engage. There cannot be any form of activity/business of banking without there being an entity. Section 6 is not a provision of the conferral of the status of the banking company. The definitions of 'banking' and 'banking company' are contained in Section 5(b) and 5(c) of the BR Act, 1949 respectively, and when reading with Section 56(a), it means co-operative banks also. The co-operative bank falls within the definition of Section 5(c), and its activity is of banking, and in addition to the business of banking, a co-operative bank may engage in any of the business as enumerated in Section 6.*
>
> *Effect of Schedule VII List I Entries 43 and 45 and List II Entry 32 of the Constitution of India."*

12. The Constitution Bench further held that recovery of dues would be an essential function of any banking institution and Parliament can enact a law under List I Entry 45 as the activity of banking done by co-operative banks is within the purview of List I Entry 45. The Constitution Bench decision as such held that it is open to the Parliament to provide the remedy for recovery under Section 13 of the SARFAESI Act.

13. The submission canvassed by Dr. Mrs. R.S. Sirpurkar which is that in view of the decision of the Constitution Bench in *Pandurang Ganpati Chaugule* (supra), the fora under the Act of 1960 would not have the jurisdiction to entertain recovery proceedings at the instance of co-operative banks, is expressly rejected by the very same decision on

which Dr. R.S. Sirpurkar is heavily relying. *Au contraire*, the Constitution Bench decision holds that there is no conflict created by providing **additional procedures** under Section 13 of the SARFAESI Act and that it is open to the bank to adopt a procedure which it may so choose (emphasis supplied).

14. Significant are the observation in *Pandurang Ganpati Chaugule* (supra), in paragraph 112 which reads thus :

> *"112. It is apparent that in order to avoid verbatim reproduction of the earlier provisions, which did not apply to a cooperative bank, a device was carved out in Section 56(a) to read 'company' as 'banking company' or 'the company' or 'such company' as references to a cooperative bank. If the definition in Section 5(c) and interpretation clause are not read as incorporated and having been amended, the interpretation clause and the entire amendment of Part V will become unworkable. It was not practical to amend the entire Act of 1949 as it dealt with 'incorporation, regulation and winding up' of other entities relatable to List I, as such the provisions were required to be retained, and such matters concerning cooperative societies/banks, relatable subject-matter under Schedule VII List 1 Entry 32 of the Constitution of India, were to be excluded. As various provisions were to be omitted in their application to the cooperative societies and other provisions were to apply in a modified form, the amendments were made in the provisions in their application to the cooperative banks by providing a separate Chapter. Thus, it was not considered necessary nor would have been appropriate to amend the definition of Section 5(c) where it existed, in fact it was so amended in Section 56(a). Entire Chapter V was enacted concerning the application of the Act to the cooperative banks and has to be given full effect. Merely because the procedure for recovery of dues is provided in the Cooperative Societies Act, could not have come in the*

way of interpretation of that expression 'cooperative bank' which was included in the definition and interpretation clause of Section 5 of the BR Act, 1949. It was open to Parliament to deal with the subject of 'banking' in List I Entry 45 and this Court in Greater Bombay Coop. Bank Ltd. (supra) itself opined that the BR Act, 1949 applies to cooperative banks which is the enactment related to List I Entry 45 and third proviso to Article 243-ZL(1) of the Constitution of India also provides that the BR Act shall also apply. Thus, the Parliament considered it appropriate to provide additional remedy for speedy recovery which is an alternative even if there is an incidental encroachment on the field reserved for the State under List II Entry 32, as in pith and substance, the 'banking' is part of List I Entry 45 and recovery procedure is covered within the ken of List I Entry 45. Thus, considering the doctrine of pith and substance and incorporation by amendment made, we are of the considered opinion that cooperative banks are included in the definition of 'bank' and 'banking company' under Sections 2(1)(c) and 2(1)(d) of the SARFAESI Act.” *(emphasis supplied)*

15. In view of the unambiguous articulation in *Pandurang Ganpati Chaugule* (supra), it does not possible to accept the submission that the fora under the Act of 1960 do not have the jurisdiction to entertain the recovery proceedings.

16. The petition is dismissed. No order as to costs.

JUDGE

adgokar