

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9377 OF 2022

Mahesh Govind Kargutkar

.. Petitioner

Versus

The Liquidator, Bhandari Co-op. Bank Ltd &
Ors.

.. Respondents

WITH

WRIT PETITION NO. 9375 OF 2022

Digambar Krishnaji Bhare

.. Petitioner

Versus

The Liquidator, Bhandari Co-op. Bank Ltd &
Ors.

.. Respondents

WITH

WRIT PETITION NO. 12243 OF 2019

Dhanajirao Ramchandra Renushe

.. Petitioner

Versus

The Liquidator, Bhandari Co-op. Bank Ltd &
Ors.

.. Respondents

WITH

WRIT PETITION NO. 9376 OF 2022

Pravin Namdeo Raorane

.. Petitioner

Versus

The Liquidator, Bhandari Co-op. Bank Ltd &
Ors.

.. Respondents

WITH

WRIT PETITION NO. 12325 OF 2019

Sheetal Yashwant Bondre

.. Petitioner

Versus

The Liquidator, Bhandari Co-op. Bank Ltd &
Ors.

.. Respondents

**WITH
WRIT PETITION NO. 9378 OF 2022**

Ratilal Pitambar Bhole .. Petitioner
Versus
The Liquidator, Bhandari Co-op. Bank Ltd &
Ors. .. Respondents

**WITH
WRIT PETITION NO. 12353 OF 2019**

Parmod Ladoba Manjrekar .. Petitioner
Versus
The Liquidator, Bhandari Co-op. Bank Ltd &
Ors. .. Respondents

**WITH
WRIT PETITION NO. 12123 OF 2019**

Vishwajeet K. Raut .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 12581 OF 2019**

Sudhir Krishnakant Kamble .. Petitioner
Versus
Commissioner for Co-operation & Registrar of
Co-operative Societies & Ors. .. Respondents

**WITH
WRIT PETITION NO. 11808 OF 2019**

Pratap (Babu) Arjun Nagvekar .. Petitioner
Versus
Commissioner for Co-operation & Registrar of
Co-operative Societies & Ors. .. Respondents

**WITH
WRIT PETITION NO. 11809 OF 2019
WITH
INTERIM APPLICATION NO. 1499 OF 2020**

Sharad Bharat Kandalkar .. Petitioner

Versus

Commissioner for Co-operation & Registrar of
Co-operative Societies & Ors. .. Respondents

WITH

WRIT PETITION NO. 11810 OF 2019

Deochand Parshuram Shetye .. Petitioner

Versus

Commissioner for Co-operation & Registrar of
Co-operative Societies & Ors. .. Respondents

WITH

WRIT PETITION NO. 12023 OF 2019

Santosh Prabhakar Bidoo .. Petitioner

Versus

Commissioner for Co-operation & Registrar of
Co-operative Societies & Ors. .. Respondents

WITH

WRIT PETITION NO. 12029 OF 2019

Rajendra Parmanand Shetye .. Petitioner

Versus

Commissioner for Co-operation & Registrar of
Co-operative Societies & Ors. .. Respondents

WITH

WRIT PETITION NO. 12098 OF 2019

Umesh Manohar Chamankar .. Petitioner

Versus

Commissioner for Co-operation & Registrar of
Co-operative Societies & Ors. .. Respondents

WITH

WRIT PETITION NO. 12097 OF 2019

Udaykumar Bhaskar Shirodkar .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 11926 OF 2019**

Vilas Bhaskar Kocharekar	.. Petitioner
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 12094 OF 2019**

Gunvant Gangaram Manjarekar	.. Petitioner
Versus	
Commissioner for Co-operation & Registrar of Co-operative Societies & Ors.	.. Respondents

**WITH
O.S. WRIT PETITION (ST) NO. 523 OF 2020**

Amar Sakharam Khavnekar	.. Petitioner
Versus	
State of Maharashtra & Ors.	.. Respondents

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- Mr. Avinash H. Fatangare a/w Ms. Archana S. Shelar i/by Ms. Vishakha Pandit for Petitioners in WP/9375/2022, WP/12243/2019, WP/9376/2022, WP/12325/2019, WP/9377/2022 & WP 9378/2022
- Mr. Ajit Karwande i/by Mr. Sampatrao Pawar for Petitioner in WP/12353/2019
- Mr. Rajeshwar G. Panchal a/w Mr. A.R. Kori for Petitioner in WP/12123/2019
- Mr. Anil Anturkar, Senior Advocate a/w Mr. Harshvardhan Suryawanshi i/by Bharati Aindey for Petitioner in WP/12581/2019
- Mr. Atul Damle, Senior Advocate a/w Mr. Prashant Kulkarni for Petitioners in WP/11808/2019, WP/11810/2019, WP/11809/2019, WP/12023/2019, WP/12029/2019 and WP/12098/2019
- Mr. Shailendra Kanetkar a/w Ms. Shravari Kanetkar and Yash Dewal for Petitioner in WP/12097/2019
- Mr. Akash Rebello a/w Mr. Rajiv Deokar a/w. i/by Akshay Dalvi for Petitioner in WP/11926/2019
- Mr. Sachin Pawar for Petitioner in WP/12094/2019
- Mr. Abhijeet Desai a/w Mr. Karan Gajra i/by Desai Legal for

Petitioner in WP(L) 523/2020

- Mr. Sachin H. Kankal, AGP for State in all the Petitions
- Dr. Uday Warunjikar a/w. Mr. Omkar Mane a/w Ms. Hema Kenjale for Respondent Nos. 3 & 4 in all the Petitions
- Ms. Rebecca Almeida a/w. D.S. Hale for Respondent Nos. 2 and 3 in OS WP(L) 523/2020
- Mr. S.B. Gore, AGP a/w. Mr. Kedar B. Dighe, AGP for Respondent No.1 and 4 State in OS WP ST No.523/2020
- Ms. Rakhi Gavade, Liquidator of the Bank present
- Mr. Nazmi Virani, Recovery Officer present

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CORAM : MILIND N. JADHAV, J.
Reserved on : JANUARY 12, 2023
Pronounced on : JANUARY 17, 2023

JUDGMENT:

A. FACTS:-

1. This group of 19 Writ Petitions are disposed of by this common Judgment and Order.

2. Facts in all Writ Petitions are identical. Challenge in all Writ Petitions is to the Inquiry Report - Order dated 25.09.2018 under Section 88 of the Maharashtra Co-operative Societies Act, 1960 (for short “**the said Act**”) and to the Order dated 20.09.2019 passed by the Hon’ble Minister Co-operation, State Government, Maharashtra in Appellate proceedings under Section 152 of the said Act upholding the order dated 25.09.2018.

3. By virtue of common order dated 25.09.2018, the Authorized Officer indicted and held 27 persons liable for committing

fraud on the Bhandari Co-operative Bank Ltd (for short **“the Bank”**) by holding them culpable for causing financial loss to the Bank due to non- recovery of outstanding rickshaw loans and housing loans disbursed by the Bank to the tune of Rs. 13.91 Crores and Rs. 6.88 Crores respectively to its borrowers during the period 2007-2009.

4. 19 persons out of the above 27 Employees / Directors of the Bank are Petitioners before me. All Petitioners challenged the order indicting them for causing financial loss passed under Section 88 of the said Act by filing statutory Appeal under Section 152 before the Appellate Authority. By identical but separate orders, all dated 20.09.2019, Appeals were dismissed and the order dated 25.09.2018 was upheld.

5. Before I advert to the facts and submissions of the parties, it would be convenient to compartmentalize all 19 Petitions into 3 groups as under for the purpose of consideration on the basis of facts:-

(i) Writ Petition Nos. 9377/2022, 12353/2019, 12123/2019, 12243/2019, 12325/2019, 9375/2022, 9376/2022 and 9378/2022 are filed by Petitioners who were employed in the capacity of Branch Managers / Officers in various branches of the Bank;

(ii) Writ Petition Nos. 12581/2019, 11808/2019, 11818/2019, O.S. (St) 523/2020, 11809/2019,

12023/2019, 12029/2019 and 12098/2019 and 12094/19 are filed by Petitioners who were Directors of the Bank;

(iii) Writ Petition Nos. 12097/2019 and 11926/2019 have been filed by Petitioners who were the Employee / Director of the Bank i.e representative of the employees on the Managing Committee / Board of Directors of the Bank.

5.1. Facts and Exhibits of Writ Petition Nos. 9377/2022 and 12581/2019 shall be referred to for convenience as they are common for all save and except those which are different and also stated herein. As seen in the table annexed at page 296 of Writ Petition No. 9377 of 2022, Petitioners are held liable for causing financial loss to the Bank to the extent of the amount shown against each Petitioner's name. The total liability of approximately Rs. 20.79 Crores has now swelled to Rs. 23.75 Crores by applying interest @ 12% p.a. from 01.03.2013 to 31.12.2022 as informed by the Official Liquidator for the Bank.

6. To appreciate the *lis*, it would be useful to note down certain relevant facts leading to the passing of the two orders by the statutory Authorities indicting the Petitioners. Following are such of the relevant facts:

6.1. In the case of the first group of Petitions filed by the Employees following are relevant facts:

6.1.1. All Petitioners in this group had either joined the Bank as a clerk or as a Junior Officer right at the inception of their career and rose to the post of Officer / Manager / Branch Manager and were deployed in various branches of the Bank in Mumbai.

6.1.2. During the period of 2006 – 2009, Petitioners were working as Managers / Junior Accountants / Branch Managers in various branches.

6.1.3. One Panchani Associates, Chartered Accountant was appointed as Special Statutory Auditor to conduct the audit of the Bank by Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State, Pune vide Order dated 13.04.2011. Panchani Associates conducted the statutory audit of the Bank along with its 6 branches for the period of 01.04.2010 to 31.03.2011. The audit was carried out by referring to the books, records, financial statements, annexures, lists etc, which were verified from the computers of the Bank. On 07.07.2011 Panchani Associates submitted a Special Audit Report opining that a suspected fraud was discovered in the case of rickshaw loans disbursed by the Goregaon branch, Andheri branch, Bhandup branch and Bhayander Branch of the Bank. It was stated that rickshaw loan overdue was continuously increasing

and it was difficult for the branch to recover the said amount at their end. On inquiry with the RTO, it was revealed that some RC books were fake and fabricated by the Loan agents. That the Bank lodged a complaint in this respect against three rickshaw loan agents appointed by the Bank with the Economics Offence Wing (for short, “**EOW**”). That at the same time, some third party had also lodged a complaint against the Board of Directors of the Bank with the Anti Corruption Bureau (ACB) regarding forgery, doctoring documents and connivance. That ACB seized 1076 files from the Bank and inquiry was under progress and the estimated amount involved in rickshaw loan fraud was approximately Rs. 13.3 Crores. Another suspected fraud discovered and stated in the report pertained to housing loans disbursed by the Dadar Branch to 69 BEST employees between April 2008 and August 2009 of Rs. 10 Lacs each. It was stated that after depositing a few installments, the borrowers had stopped paying. That in March 2011, the entire outstanding loan amount of Rs. 682.58 Lacs became a Non-Performing Asset (**NPA**). That action under SARFAESI was initiated in all 69 cases. That 6 cases were pending in the Collector’s Office, Thane. That 34 cases were filed in Court for recovery. That awards were received in 9 cases. That balance 25 cases were pending adjudication. That 35 cases were yet to be filed in the Court at the then time. That even in this csae a complaint was lodged with EOW by the Bank against builders,

developers and borrowers and some third party had lodged complaint with the ACB and all 69 files were seized by ACB and the estimated amount involved in the housing loan fraud was approximately Rs. 6.83 Crores.

6.1.4. It is pertinent to note at this juncture that Panchani Associates also stated in their report that the CEO of the Bank at the then time, Mr. Deochand P. Shetye was dismissed in 2011 for knowingly disbursing the aforementioned rickshaw and housing loans. Mr. Shetye is one of the Petitioners before me, in the second group of Petitions.

6.1.5. On 30.09.2011, the Deputy Registrar, Co-operative Society, G/N-Ward, Mumbai issued a show-cause-notice under Rule 72(2) on the basis of the above report calling upon all Petitioners to submit their defence statements before initiating action against them under Rules 72(2) & (4) for breach of trust and misusing and mismanagement of Bank's property and called upon them to submit their written statement in defence in respect of the financial loss caused to the Bank and as to why action should not be initiated under Section 88 of the said Act against them.

6.1.6. Record indicates that each of the Petitioners furnished their written statement / reply to the Deputy Registrar in reply to the show-cause-notice. Records further indicates that each of the Petitioner

communicated to the Deputy Registrar and informed him that the auto loan application and home loan application registers though maintained in the branch, were not available since the same were destroyed by the CEO who was involved in granting fraudulent loans. Record also indicates that Petitioners have since 2008 – 2009 addressed written complaints to the Deputy Chief Minister, Maharashtra and Commissioner of Police, Mumbai against the CEO for misappropriation and breach of trust of the Bank's property and furnished details of such fraudulent loans advanced to illegal companies having dummy workers, loan to teachers, loan sanctioned for duplicate gold ornaments, bogus loan sanction for auto rickshaw with the help of one Mr. Guddu Yadav, Loan agent of Sai Auto Agency, purchase of land at Ratnagiri which was actually donated to the Trust by the Bank and advance payments given to a Computer Company for creating a Banking software for which the Bank had incurred huge losses during the said period.

6.1.7. Records indicates that in the case of some of the Petitioners namely Petitioner in Writ Petition 12353/2019, it is seen that after explanation dated 16.11.2011 was submitted by the said Petitioner, the show-cause-notice was withdrawn, suspension order of the Petitioner was revoked and Petitioner was allowed to resume duty with the Bank in the same position once again.

6.1.8. Thereafter a second show-cause-notice was served on the Petitioners dated 16.05.2013. It is this second show-cause-notice which culminated into the Inquiry Report / order under Section 88 and the impugned order of the Appellate Authority which upheld the Section 88 order, both of which are under challenge.

6.1.9. After considering the explanation, it is seen that the charge levelled against Petitioners on the basis of Panchani Associates Audit Report is for commission of various irregularities and illegalities in disbursement of auto rickshaw loan and housing loan.

6.1.10. A common chargesheet was issued to 37 persons including all Petitioners highlighting the role of each Petitioner therein and holding that each Petitioner has illegally sanctioned and disbursed rickshaw loans and housing loans by committing various illegalities and irregularities in violation of RBI guidelines thereby causing financial loss of Rs. 13.3 Crores and 682.58 Lacs to the Bank.

6.1.11. In the chargesheet, after the general introduction, each of the Petitioner's case is highlighted separately by giving details of the Petitioner's workplace and the explanation offered by the Petitioner to the show-cause-notice and after considering the same, a charge is levelled holding the Petitioner liable for the aforementioned acts and causing financial loss to the Bank.

6.1.12. All Petitioners whether employees or Directors are chargesheeted and held liable for causing financial loss to the Bank in different denominations depending upon which branch they were working with, disbursement of loan amount from their respective branches, non-recovery of loans, NPAs and attendance of the number of meetings by Directors during which their signatures appear on the respective loan sanction files.

6.1.13. Inquiry was conducted by Respondent No. 2 under the statutory provisions of Section 88 of the said Act. In the inquiry, the Bank led evidence of one of its then CEO at that time Smt. Anagha Karalkar in support of Bank's case and the charges levelled against each of the Petitioners. In defence, Petitioners examined themselves to refute the Bank's charge against them. Evidence was recorded in question and answer form.

6.1.14. Pursuant to completion of inquiry, Respondent No. 1 prepared the statutory report / order dated 25.09.2018 under Section 88 of the said Act holding 27 persons i.e. employees / Director / others out of the originally chargesheeted 37 persons liable for causing financial loss to the Bank.

6.1.15. Being aggrieved each Petitioner filed statutory Appeal under Section 152 of the said Act before Respondent No. 4. On 20.09.2019, by identical but separate orders, Respondent No. 4 dismissed the

Appeal and upheld the statutory inquiry report / order under Section 88 of the said Act and confirmed its findings.

6.1.16. Hence the present Petitions.

7. The aforesaid facts are common in all petitions and hence for brevity, they are not repeated for the other two groups save and except to state that, the persons in the other two groups were Directors / employee-Directors of the Bank and attended meetings during which they had appended their signatures on the loan file and hence they are held liable for causing loss to the Bank since recovery has not been made.

8. Before I advert to the legal provisions, submissions and findings, I find it necessary to reproduce the submissions made by the learned Advocates / Senior Advocates appearing on the behalf of the Petitioners as these submissions would have a significant relevance in the context of adjudicating the present case.

B. PETITIONERS' SUBMISSIONS:-

9. Mr. Fatangare, learned Advocate for the Petitioners (Branch Managers / employees) has addressed in six Writ Petitions. He has referred to the facts in Writ Petition No. 9377 of 2019 and painstakingly taken me through the gamut of the entire pleadings and proceedings, the Inquiry Officer's report / order dated 25.09.2018 and

the Appellate Authority's order dated 20.09.2019. He made the following submissions:-

- (i) that both the above orders when read would show that they were passed with complete non-application of mind against the well settled principles of conducting the statutory inquiry and the evidence led by both the parties in the present case.
- (ii) that as per policy framed by the Bank for scrutiny, disbursement and recovery of rickshaw loan dated 02.11.2011, the same was in fact implemented only by the CEO of the Bank; that the CEO and the Board of Directors appointed auto-rickshaw loan agents by executing a memorandum of understanding, undertaking-cum-guarantee, indemnity bond, declaration and Affidavits; that these loan agents were primarily responsible for preparation and completion of the loan files; that though admittedly Branch Managers / employees maintained the record, but they were not responsible for any decision making process for sanction of the rickshaw / housing loan to the applicant;
- (iii) that his Petitioners were indicted in respect of the

same cause of action in 2011 and were exonerated from the same charges which is the subject matter of the present proceedings; hence a second inquiry under the provisions of Section 88 was barred for the same cause of action and all steps taken pursuant to the show cause notice in the second inquiry were *void ab initio*;

- (iv) that his Petitioners were devoid of any authority or power to recommend grant of loan, sanction grant of loan, scrutinize loan papers and recover outstanding loan installments as Branch Managers / Junior Accountants cannot be considered as “Officer” under the definition of ‘Officer’ as contemplated by Section 2(20) of the said Act; hence his Petitioners cannot be impleaded in inquiry proceedings under Section 88 of the said Act;
- (v) that it was the responsibility of Directors of the Bank and CEO of the Bank to recommend, grant and sanction loan to the incumbents / Applicants;
- (vi) that in so far as scrutiny of loan papers is concerned, it was the entire responsibility of the loan agents appointed by the Bank. In support, he has taken me through the MOU / Affidavits, declaration etc. executed

between the Bank and loan agents and read several onerous clauses therein which would exemplify that the role of Petitioners in so far as the recommendation, sanction and scrutiny of loan was virtually nil;

- (vii) that once sanctioned, disbursement of loan took place through the branches in which Petitioners / Branch Managers / employees were working, but for this reason, they cannot be held responsible or liable for non-recovery, financial loss and be indicted; that recovery of outstanding loan amount under the MOU was squarely on the loan agents appointed by the Bank and it was their duty to recover the outstanding amount and deposit the same with the Bank; hence for any negligence in recovery of the outstanding installments, Petitioners / Branch Managers could not be held liable; that loan agents appointed by Bank stood as guarantors in writing for recovery of the entire loan amount; that they were the persons who brought the proposal of the incumbents / applicants complete in all respect to the Bank and had also submitted an indemnity to that effect to the Bank; that the role of

Petitioners / Branch Managers was not concerned with verification of documents, but admittedly the files were received complete in all respects by the branch to which the Application was submitted through the loan agents;

(viii) that only after complete loan files were submitted by loan agents, they were checked by the branch in the usual course and sent to the Scrutiny Committee i.e. a separate branch constituted by the Bank for scrutiny. On a question being put by the Court as to whether the Branch Manager verifying the file would do so as per any checklist provided by the Bank, his answers was a categorical 'No'. He submitted that all that the Petitioners who received the complete file from the loan agent did was to forward the same to the Scrutiny Committee (Branch);

(ix) that it has come on record and an admitted position that the Goregaon Branch of the Bank was established and designated as the branch for scrutiny of all loan proposals / documents since long. Thus, loan proposals received from various branches for rickshaw loan were forwarded to the Goregaon Branch of the Bank;

- (x) that once the proposal was scrutinized and found to be in order and appropriate, the loan file would then be forwarded to the Loan Sanction Committee comprising of the Chairman, two Directors and CEO of the Bank; that the Loan Sanction Committee would approve the loan and return the file to the branch from where the loan proposal emanated, for disbursement; that undoubtedly once the loan was sanctioned, Petitioners / Branch Managers under their signature disbursed the loan to the incumbents / applicants / loan agents. That this act of disbursement cannot be construed as if the Branch Managers were the sanctioning authority of the loan to the borrower;
- (xi) that once the loan was disbursed to the incumbent / applicant through the authorized loan agent, it was the duty of the agent to ensure purchase of the rickshaw, register the said vehicle with RTO, procure the RC book of the registered vehicle and once done with the above 3 acts, submit the RC book along with such relevant papers to the branch which disbursed the loan; that once the documents were received the same were placed in the record maintained by the respective

branch and recovery of the loan thereafter progressed;

(xii) that one of the reason attributed for financial fraud in Panchani Associates Report pertained to fabrication of RC books in case of rickshaw loans by Loan agents which led to huge outstanding and it cannot be attributed to the Petitioners / Directors; that it cannot be said that in such facts any fraud was played by Petitioners; that charge of submitting fabricated RC books would lie at the doorstep of the loan agents and not the Branch Managers / Directors;

(xiii) that chargesheet dated 02.05.2015 submitted pursuant to show-cause-notice received by Petitioners / Branch Managers records that each of the Petitioners offered their respective explanations to the show-cause-notice and placed on record all such relevant details to show that they cannot be held liable for recovery of the outstanding loan installments; that to give an illustration, he has pointed out that in the case of Petitioner in Writ Petition No. 9377/2019, he has filed four explanations / replies to show-cause-notice dated 16.11.2011, namely on 23.12.2011, 18.06.2013, 25.06.2013 and 11.07.2013; that similar explanations

have been given by each of the Petitioners / Branch Managers explaining minute details in the contract executed between the Bank and loan agent and the nuances of the same for assigning culpability; that despite placing the said material on record, chargesheet has mechanically rejected the explanation as being inadequate and indicted the Petitioners for causing financial / monetary loss to the Bank in different denominations;

(xiv) that in the housing loan fraud, there were 69 cases which got converted into NPA; admittedly loan was given to BEST employees who failed to pay the outstanding installments; that the mechanism for the sanction of housing loan to the borrower was once again beyond the power of Branch Managers; that a similar procedure was in place in preparation of loan file and submitting the same to the Scrutiny Committee and thereafter to the Loan Committee and disbursement of loan was made thereafter by the Dadar branch after receiving sanction;

(xv) that in Section 88 inquiry, evidence was led by both parties in support of their respective cases but no

material / documentary evidence of fraud whatsoever has been placed on record by the Bank to indict Petitioners; that role of Petitioners in commission of any act of fraud or for that matter financial fraud is not explained at all; that a mechanical exercise has been done to foist liability of unrecovered / outstanding rickshaw loans without adhering to the fundamental provisions of Section 88, without fulfilling any of the condition precedent for application of Section 88 and the entire inquiry report is a futile exercise without any findings based on evidence of fraud; that it has come on record in the evidence of Smt. Anagha Karalkar that she was not authorized by the Bank to give evidence or depose in the inquiry; that loan agents were appointed by the Bank and it was their primary duty to complete registration process of vehicles and submit all such relevant documents to the Bank's branch; that Petitioners / Branch Managers did not take part in the process of scrutinizing and / or sanctioning rickshaw loan or housing loan to any borrower; hence in view thereof, merely for disbursement of loan amount, Petitioners cannot be held liable if the recovery had failed; that there was no element of fraud as it is

proved that the outstanding was due to non-recovery of loan / NPA and acts attributable to submission of fake RC books after disbursement of loan.

9.1. In support of the above submissions, he has referred to and relied upon a compilation of documents comprising 168 pages as under:-

- (i) Copy of Bye Laws of the Respondent No. 1 Bank (1-14);
- (ii) Copy of Standing Order (15-29);
- (iii) Copy of the Affidavit by Baliram Chandrama Yadav, Sole Proprietor of M/S. Sai Auto Deal dated 05.08.2010 (30 – 31);
- (iv) Copy of the Affidavit dated dated 03.04.2010 (34 – 37);
- (v) Copy of the Indemnity Bond dated (13.02.2010);
- (vi) Copy of the declaration dated 13.02.2010 (38 – 43);
- (vii) Copy of the MOU dated 13.02.2010 (44 – 58);
- (viii) Copies of Roznamas (59 – 168).

9.2. He has contended that on perusal of the above documents it would reveal that the standing orders by the Commissioner of Labour under Section 35(2) of the Bombay Industrial Relations Act, 1947 for employees in Banks mentioned in the Schedule appended thereto (which includes the Bank herein), stipulated the procedure for holding an inquiry against an employee on account of 32 misconducts / acts /

omissions and the procedure thereof is stipulated therein; that this procedure was not followed in the present case in respect of Branch Mangers; that the affidavit submitted by the loan agent would reveal that he has given an unconditional guarantee in favour of Bank in case of any default by the borrower in the case of auto-rickshaw loan; that he has confirmed that all cases for loan sanction were recommended by him; that on the basis of his guarantee given to the Bank, Bank granted loan to the rickshaw owners in as many as 273 cases aggregating to an outstanding amount of Rs. 2,89,54,971/- during the relevant period and that he undertook to repay the loan as well as handover custody of vehicle in trust and on behalf of the Bank. While referring to another affidavit of the loan agent in the compilation, he submitted that it is stated therein that all rickshaw accounts have been introduced by him (loan agent) and as per his request, Bank has taken a decision to grant loan. Lastly he has referred to the MOU executed by Bank with the loan agent wherein Clause No. 7 states that the loan agent should arrange the execution of documents regarding loan by the operators as per the guidelines of the Bank; that it is the sole responsibility of the loan agent to get the loan installment regularly collected and that he shall stand as one of the sureties for each loanee and thereby guarantee repayment of the loan.

9.3. In support of his submissions, Mr. Fatangare has relied upon the following decisions of the Supreme Court and this Court as given below:

- (i) **Uma Charan Vs. State of Madhya Pradesh**¹;
- (ii) **Anil Kumar Vs. Presiding Officer & Ors.**²;
- (iii) **Roop Singh Negi Vs. Punjab National Bank & Ors.**³;
- (iv) **Kranti Associates P Ltd & Anr. Vs. Masood Ahmed Khan & Ors.**⁴;
- (v) **Allahabad Bank & Ors. Vs. Krishna Narayan Tewari**⁵;
- (vi) **Gajanan Pandurang Shet Parkar Vs. Authorized Person of the Registrar of Co-op. Societies, Mapusa & Ors.**⁶;
- (vii) **Shriram Dhonduji Raut Vs. Bahu Uddesiyab Sahakari Sanstha Virsi & Ors.**⁷

9.4. At the outset, while referring to the decision of **Shriram Dhonduji Raut** (7th *supra*), he has drawn my attention to paragraph No. 7 of the said decision which refers to the definition of the word “officer” under Section 2(20) of the said Act and contended that Petitioners / Branch Managers were employees appointed by the Bank and not persons elected to qualify within the ambit of the definition of

1 (1981) 4 SCC 102

2 (1985) 3 SCC 378

3 (2009) 2 SCC 570

4 (2010) 9 SCC 496

5 (2017) 2 SCC 308

6 1998 (2) Mh.L.J. 483

7 2004(3) Bom.C.R. 383

“Officer”. Hence inquiry proceedings under Section 88 cannot lie against them since nothing was placed on record to show that they were empowered to give directions in regards to the business to the Bank or possessed decision making power for recommendation, scrutiny, sanction of rickshaw / housing loan.

9.5. While referring to the decisions in the case of **Uma Charan** (*1st supra*), **Anil Kumar** (*2nd supra*) and **Roop Singh Negi** (*3rd supra*), he has referred to paragraph No. 8 in the case of Uma Charan wherein it is stated that reasons are required to be given while arriving at any conclusion as such reasons are the links between the material on which certain conclusions are based and the actual conclusions and they disclose how the mind is applied to the subject matter for a decision. He submitted that Supreme Court has held that any decision should reveal a rational nexus between the facts considered and the conclusions reached to show that the decisions recorded are manifestly just and reasonable. According to him, these principles have not been followed in the present Section 88 inquiry. He submitted that the provisions of Indian Evidence Act may not be strictly applicable in the present inquiry but cogent material still has to be brought on record to point to the guilt of the Petitioners and the same needs to be proved to bring home the charge of fraud. He submitted that the Supreme Court in paragraph No. 23 in the decision of **Roop Singh**

Negi (3rd *supra*) has held that inferences drawn by the officers need to be supported by material evidence. While referring to the decision in the case of **Kranti Associates** (4th *supra*), he has drawn my attention to paragraph No. 47 therein which lists 15 guidelines requiring an Inquiry Officer / Judicial Authority to give reasons for the decision arrived at as part of the due process of law. I find it necessary to reproduce paragraph No. 47 of the said decision which reads thus:

“47. Summarizing the above discussion, this Court holds:-

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- (b) A quasi-judicial authority must record reasons in support of its conclusions.*
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- (g) Reasons facilitate the process of judicial review by superior Courts.*
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision-making justifying the principle that reason is the soul of justice.*
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

9.6. He submitted that in the case of **Gajanan** (6th *supra*), the provisions of Section 88 of the said Act have been categorically analyzed and enunciated in paragraph Nos. 7 to 12 therein which I have noted and will be dealt with in my findings later. In the said decision, the expression “misfeasance” is elaborately discussed which I shall advert to in my findings.

9.7. On the basis of the aforesaid submissions, Mr. Fatangare has urged the Court to set aside the inquiry report / order dated 25.09.2018 under Section 88 of the said Act and the impugned order dated 20.09.2019 passed by Respondent No. 4 upholding the inquiry

report / order in the interest of justice.

10. Mr. Ajit Karwande, learned Advocate appearing for Petitioner in WP No. 12353 of 2019 has heard the submissions advanced by Mr. Fatangare and submitted that the Petitioner in his Writ Petition is also similarly placed as a Branch Manager and hence he would adopt each and every submission advanced by Mr. Fatangare as if the said submissions were made by him. He sought leave of the Court to make six additional submissions in order to supplement the submissions already made in order to assist and enable the court to adjudicate the present case. He made the following additional submissions:-

- (i) that as per the policy of the Bank for scrutiny and sanction of rickshaw loan, a separate branch at Goregoan was established and nominated, hence the Petitioners could not be held liable for the charge of fraud which according to him had not been proved by the Bank;
- (ii) he has referred to the letter dated 22.10.2010 placed at Exh. 'E' (Page 123) of his Writ Petition and contended that by this letter the CEO of the Bank has issued a letter / warning to his Petitioner not to interfere with the loan department as he was

instrumental in lodging several complaints related to issuance of rickshaw / housing loans;

(iii) Next he has referred to the executed contract and documents between the Bank and the loan agent which are placed at Exh. 'D' collectively (Page 55 to 122) of his Petition and contended that this material was the most relevant piece of evidence and despite it being brought to the notice of the Inquiry Officer and the Appellate Authority, they have not considered it for fixation of liability on the delinquent loan agent and instead Petitioners / Branch managers have been indicted;

(iv) Next he submitted that Petitioner in his Petition was exonerated in the first inquiry and taken back in service in 2011 and for the same cause of action, same subject matter and for the same period, a second notice dated 15.05.2013 was issued to him which is impermissible in law. I have perused both the notices which are under Rule 72 (2) of the said Rule and are at page Nos. 52 and 152 of his Petition.

(v) Next he has submitted that in his Petitioner's case, the statement of claim had fixed his liability at Rs.

35,24,618/- whereas the inquiry report concludes the liability at Rs. 37,56,877/- for which there is no material, no explanation, no computation and no finding whatsoever adduced by the Bank;

(vi) Next he has submitted that the Petitioner is not an officer as contemplated under the provisions of Section 2(20) of the said Act and hence, not liable under Section 88 inquiry.

10.1. In support of his case, he has relied upon the following decisions:

- (i) **Shriram D. Raut** (*7th Supra*);
- (ii) **Chandrashekhar S. Bhole Vs. Bhandari Co-op. Bank Ltd & Ors.**⁸;
- (iii) **Subhash Narayan Sardal & Anr. Vs. State of Maharashtra & Ors.**⁹

10.2. On the basis of his submissions, he has urged that the report dated 25.09.2018 and impugned order dated 20.09.2019 be quashed and set aside.

11. Mr. Panchal appearing for Petitioner in Writ Petition No. 12123 of 2019 submitted that his Petitioner is a Branch Manager and is similarly placed as in the above cases. He has fairly adopted each

⁸ Judgment dated 06.09.17 passed by this Court in Writ Petition No. 9548 of 2013 and Companion Petitions

⁹ Order dated 06.06.2019 passed by this Court in Writ Petition No. 1038 of 2015

and every submission advanced by Mr. Fatangare and Mr. Karwande and urged the Court to considered the same for setting aside the report dated 25.09.2018 and impugned order dated 20.09.2019.

12. Mr. Anturkar, learned Senior Advocate appearing for Petitioner in WP 12581/2019 submitted that the Petitioner in his Petition was a Director of the Bank. That under Section 88 inquiry a liability of Rs. 53,67,836/- has been foisted on him which has been upheld by the Appellate Authority.

12.1. At the outset, he has drawn my attention to the Special Audit Report of fraud given by Panchani & Associates, Chartered Accountant dated 07.07.2011 to emphasis the alleged fraud which was discovered by the Bank and which forms basis of the Section 88 inquiry. He submitted that in so far as rickshaw loan is concerned, the alleged fraud stated in the report pertained to some RC books being found to be fake and fabricated by the auditor after inquiry with RTO. He submitted that fraud as contemplated by the statutory Audit Report is thus attributable to the loan agents since the rickshaw loan fraud is solely based upon the finding / disclosure that some of the RC books of vehicles purchased were fake and fabricated. He submitted that the auditor has stated in the report that on inquiry and verification with RTO about validity of RC books, it was found that some RC books were fake and fabricated by loan agents. He submitted that in view of

this assertion and affirmation after inquiry was made with the RTO, it was found that some RC books were fake and fabricated by the loan agents, hence indictment of the Petitioners i.e. whether it be Directors or employees is arbitrary and highhanded. He has drawn my attention to the words of 'Any Person' as appearing in Section 88 of the said Act and would submit that such definition would certainly include the loan agents also and in the present case, they have not been proceeded with for reasons best known to the Bank. He submitted that pursuant to unearthing of the rickshaw loan fraud, Bank has lodged criminal complaint with the ACB, that inquiry is still under progress and therefore, considering that ACB has seized all files, the Audit Report is therefore, restricted.

12.2. In respect of housing loan fraud, he submitted that the audit report has clearly opined that borrowers had stopped paying the monthly installments and therefore, in such view of the matter, the Directors and employees of the Bank cannot be held responsible / liable for the NPA or for that matter, any financial loss caused to the Bank. He submitted that it is required to be noted by the Court that the Auditor has also taken cognizance of the fact that some third party has lodged a complaint against the Board of Directors of the Bank with the ACB for disbursing loans against fake documents and the ACB has seized all 69 files containing the entire record pertaining to the

estimated amount of Rs. 6.83 Crores in housing loan fraud. He summed up by juxtaposing the provisions of Sections 88 and 73(1AB) (proviso) and Rule 72(2) and 72(6) and made the following submissions :-

- (i) that Section 73 is a “special” provision for Committee and committee members; that the word “responsibility” mentioned in Section 73(1AB) (proviso), refers to the “responsibility of the members of the committee referred to in Section 73(1AB); that the words “natural calamities”, “accident” and “any circumstances beyond the control of such members” used in Section 73(1AB) are absent in Section 88;
- (ii) that Section 88 is triggered only as a result of
 - (a) any audit under the said Section or
 - (b) any inquiry under Section 83 or
 - (c) any inspection under Section 84 or
 - (d) any winding up order of the Society under Section 105, whereas Section 73(1AB) (proviso) does not require any such trigger;
- (iii) that the words “Registrar is satisfied” is absent in Section 73(1AB) (proviso) and the words used therein

are “the Registrar shall inspect”;

(iv) that the words “on the basis of” used in Section 88(1) would show “the foundational facts” on which Section 88(1) would operate; whereas 73(1B) (proviso) uses the word “records of the society” which is wider than the words “on the basis of the report” used in Section 88”; that Section 88 uses the word “any person” whereas Section 73(1AB)(proviso) specifically refers to the “Committee”; that “any person” would mean one who has taken any part in the organization or the management of the society”; that Section 73(1AB) (proviso) deals with “Management” and not “organization”; this is so because the expression “Committee” used in Section 73(1AB) (proviso) is defined in Section 2(7) of the said Act, as dealing with “Management”.

(v) that Section 88(1) deals with past or present “officer” of the society; that the word “officer” as defined in Section 2(2) would include “member of the Committee” also; that however Section 88(1) thereafter uses the word “misapplied” or retained or become liable or accountable for any money or the property of the

society or has been guilty of misfeasance or breach of the Trust in relation to the society, and that Section 73 would make the members of the committee responsible even in the absence of these words;

(vi) That whereas Section 88 uses the word “liable or accountable”, Section 73(1AB) (proviso) uses the words “responsible”; hence there is clear distinction between “liability, accountability and responsibility”;

(vii) That the words used in Rule 72, clearly show that role played by the concerned person is required to be defined and the liability assessed has to be proportionate to the role played by the person and it cannot be done by an arithmetical divider to the grand total loss, which is done in the present case and Section 88 or Section 73(1AB) (proviso) would come in the picture only when loss is caused to the society and that when loss is not caused to the society, none of these Sections would apply; that in the present case there is no finding returned as to (a) Whether any loss is caused to the society? (b) How much is the loss caused to the society? (c) Who are the persons responsible for causing that loss? (d) What is the extent of the role

played by those persons? and (e) Whether inquiry can be made under Section 88 for the second time once it is completed earlier and Petitioners are exonerated;

(viii) that if Section 88(1) is to be made applicable to members of the Managing Committee / Directors in their capacity as "officer", as defined in Section 2(20), then, merely observing that the person was Member of the Committee during a particular period or was chairman or vice chairman or office bearer during a particular period, by itself cannot make him responsible under Section 88(1) unless his role in commission of a fraudulent act is defined and articulated; that it is required to be shown that such a member of the Managing Committee has (i) misapplied any money or property of the society; (ii) retained any money or property of the society; (iii) become liable for any money or property of the society; or (iv) become accountable for the any money or property of the society; or (v) has been guilty of misfeasance in relation to the society or (vi) has been guilty of breach of Trust in relation to the society; that then and then only such a member can be held liable under Section 88(1) and

not otherwise;

- (ix) that under Section 88(1), the words "has been guilty of misfeasance or "the breach of the Trust" are crucial and that the legislation has not used the words "is guilty of misfeasance or the breach of the Trust"; that the legislation also has not used the words "is found to be guilty of misfeasance or the breach of the Trust"; that this nomenclature clearly showed that Section 88(1) would come into play only when some authority who has jurisdiction to hold any member or a person "to be guilty of misfeasance or for the breach of the Trust" has already recorded such a finding that such member or the person has been guilty of misfeasance or the breach of the Trust, only then Section 88(1) can be invoked; hence Section 88(1) is a derivative jurisdiction when some other authority has recorded the finding that the person has been held guilty of misfeasance or the breach of the Trust; that further the marginal note of Section 88 reads as "Power of the Registrar to assess damages against delinquent promoters" etc which would essentially mean that jurisdiction of Registrar is limited for assessment of the damages and not for

recording the finding that the person is a delinquent;

- (x) that the words "misapplied or retained or become liable or accountable" appearing in Section 88 would mean that some other competent authority has applied its mind and has recorded the finding and on the basis of that finding the concerned person "has become liable or accountable, and thereafter the Registrar comes in play under Section 88 only for the limited purpose of determining the extent of liability / accountability of the concerned person. Therefore if Section 88 is conjointly read alongwith Rule 72, it would mean that on completion of inquiry, another notice under Rule 72(2), is required to be given and Rule 72(6) shows "personal opportunity of hearing" to be given, which has not been followed in the present case.

12.3. He has reiterated the definition of 'officer' appearing under Section 2(20), which according to him will include Chairman, Vice-Chairman and Managing Committee Member but submitted that merely because the Directors have attended the meeting and signed the loan files, would in itself cannot be construed as if they had authority to deal with the business of the Bank. He submitted that all these material aspects are required to be unearthed in an inquiry

under Section 88 which is of a derivative nature and unless the same is done, merely recording a conclusive finding of fraud and liability in the inquiry report is not permissible. He submitted that admittedly the procedure prescribed under Rule 72(2) read with Rule 72(6) of giving a show-cause-notice and hearing the delinquent officer / employee by the Registrar has not been followed in the present case.

12.4. Finally he submitted that nowhere in the impugned inquiry report / order dated 25.09.2018 and the Appellate order dated 20.09.2019 has the role of Petitioners / Directors been highlighted so as to indict them of commission of fraud. He has laid emphasis on the agreements executed by the Bank with the five loan agents and submitted that reading of the obligations of the loan agents in those agreements along with Panchani Associates report would clearly show that the entire fraud, if any, is attributable only to the loan agents and as such, the Directors and employees of the Bank cannot be held responsible for the same. He submitted that in the case of housing loan fraud, since the borrowers had admittedly stopped paying the loan, the loan accounts turned into NPA and in such a case, loss suffered by the Bank cannot be foisted on the Directors and employees of the Bank as if the same is a result of fraud. He submitted that all that the impugned report / order under Section 88 has done is arithmetically divided the entire financial loss suffered by the Bank

between the Directors on the one hand and Branch Managers on the other hand on the basis of the number of meetings attended by them and / or the disbursement made without going into the attributes and nuances of the provisions of Section 88 inquiry under the said Act. He has therefore prayed for quashing and setting aside of the impugned report / order dated 25.09.2018 under Section 88 and the Appellate Authority's order dated 20.09.2019.

13. Mr. Atul Damle, learned Senior Advocate has appeared in WP Nos. 11808 of 2019 and 11810 of 2019. The first Petition is filed by Mr. Pratap Arjun Nagvekar, Director of the Bank whereas the second Petition is filed by Mr. Deochand Parshuram Shetye, the then CEO of the Bank. Mr. Damle has adopted the submissions made by Mr. Anturkar and in addition thereto made the following further submissions:-

- (i) that there has been an absolute violation of the principles of natural justice in the present case;
- (ii) that Petitioners whom he represents made appropriate application on 12.08.2018 before the Authorized Officer seeking all details on which reliance was placed in the inquiry under Section 88; that by reply dated 21.02.2018 of the Inquiry Officer, they were informed that their application was merely meant to protract and

delay the proceedings and no material was given to them;

(iii)that provisions of Section 88 of the said Act bar a subsequent and second inquiry in respect of the same cause of action; that in respect of his Petitioners, an earlier inquiry was initiated on 04.09.2009 and 14.09.2009 and a report dated 30.03.2011 was filed in respect thereof; that his Petitioners were completely exonerated in that inquiry pursuant to which the impugned inquiry i.e. the second inquiry was commissioned on receiving Panchani Associates Report and a chargesheet was filed followed by the impugned Section 88 report issued against Petitioners.

13.1. In support of his submissions, he has refereed to and relied upon two decisions of this Court in the case of **Arun Dattatraya Narake Vs. Authorized Officer, Kolhapur District Central Co-op Bank Ltd & Ors.**¹⁰ in respect of following the principles of natural justice and the decision in the case of **Director of Handlooms, Powerlooms & Co-operative Textiles Vs. G.S. Rambhad**¹¹ for following the statutory procedure prescribed under Section 88. He has thus joined Mr. Anturkar in stating that the impugned inquiry report / order dated

¹⁰ 2015(4) Mh.L.J. 740

¹¹ 2001(Supp.) Bom.C.R. 490

25.09.2018 and the Appellate Authority's order dated 20.09.2019 be quashed and set aside.

14. Mr. Prashant Kulkarni, learned Advocate has appeared for four Petitioners in WP Nos. 11809/2019, 12023/2019, 12029/2019 and 12098 of 2019. All Petitioners were Directors of the Bank. He has adopted the arguments and submissions made by Mr. Anturkar and Mr. Damle on behalf of his Petitioners. In addition thereto, he has persuaded me to refer to ground (n) at page No. 13 of WP No. 11809/2019 and contended that the Director who was present in the meeting and signed the loan papers / file has done so only after the Bank decided to grant the said loan to the borrower. He submitted that thus, the meetings attended by Directors for the purpose of signing the loan file was in the nature of a *post facto* loan sanction / signature. Hence Directors cannot be held to have authorized, scrutinize and / or sanctioned the loan to the borrower and therefore held liable if the same remained unpaid later. He submitted that inquiry conducted by the Authorized Officer was not a fair inquiry and his Petitioners had written a letter to the Inquiry Officer seeking all such documents and material, which was denied to them. He has therefore prayed for quashing and setting aside of the impugned report / order dated 25.09.2018 and the Appellate Authority's order dated 20.09.2019.

15. Mr. Abhijeet Desai, learned Advocate has appeared for Petitioner in OS WP (St) No. 523/2020. His Petitioner was a Director. He has adopted the submissions made by Mr. Anturkar and Mr. Damle and submitted that once the Petitioners were exonerated from the first inquiry, a second inquiry under Section 88 is not maintainable in respect of the same cause of action. He has referred to a compilation of documents. He submitted that his Petitioner was the first person to have raised an objection against grant and sanction of auto-rickshaw loans by the bank without taking any security. He submitted that as far back as in 2005, his Petitioner approached the Dy. Registrar in respect of scam in sanctioning auto-rickshaw loan from various branches as also the housing loan. He submitted that he sent a legal notice dated 30.11.2005 to the CEO of the Bank. He submitted that in 2009, he filed a police complaint with respect to sanctioning of home loan by showing bogus documents and also addressed a complaint to the Joint Commissioner and Registrar. He submitted that because of his persistent objections, since the omissions were not rectified, in 2009 he addressed a letter to the Joint Commissioner / Registrar Pune asking him to relieve him from the Indemnity Bond executed by him as Director of the Bank under Section 73 of the said Act. He submitted that as a result of the scam in sanctioning auto-rickshaw loan and home loan, the Bank ultimately went into liquidation on 15.11.2011 and the Bank's license was

cancelled by the Reserve Bank of India on 16.11.2011 and Official Liquidator was appointed. He submitted that in the proceedings before the ACB in 2012, Petitioner was not chargesheeted but was made a witness. He has referred to the correspondence at Pages 123, 124 and 142 to 183 of his Petition and drawn my attention to his various complaints and objection which he had raised with respect to the functioning of the Bank.

15.1. He has referred to and relied upon the following decisions of this court in support of his case.

- (i) **Krishna Sahebraoji Patil Dongaonkar Vs. State of Maharashtra & Ors¹²;**
- (ii) **Gajanan Pandurang Shet Parkar (6th Supra).**

15.2. He has drawn my attention to paragraph Nos. 7, 19 and 20 of the decision in the case of Gajanan (6th supra) which lay down the procedure required to be followed by the Registrar in an inquiry under Section 88. He submitted that the Petitioner raised the issue of maintainability despite which he was indicted and therefore there was gross violation of the principles of natural justice.

16. Mr. Kanetkar, learned Advocate has appeared for Petitioner in WP No. 12097/2019. At the outset, he has adopted the submissions and arguments advanced by Mr. Anturkar and Mr. Damle and has sought leave of the Court to make additional submissions which apply

12 2018(3) Mh.L.J. 506

to his Petitioner only. He has made the following additional submissions:-

- (i) that the Petitioner Udaykumar Bhaskar Shirodkar was an employee Director of the Bank appointed under Section 73(AAA) of the said Act i.e. he was the representative of the employees on the Board of Directors of the Bank;
- (ii) that the Petitioner was exonerated earlier in the Section 88 inquiry in September 2009 and in that view, the second inquiry under Section 88 undertaken by Respondent No. 2 indicting the Petitioner for the same cause of action is not maintainable;
- (iii) that under Section 73AAA(2) and the third proviso thereunder, an employee Director has no right to vote, hence, according to him, Petitioner cannot be held liable for any decision making and thus, cannot be indicted for any financial loss;
- (iv) that role of the Petitioner has not been highlighted under any of the four pre-conditions which are requisite for the Section 88 inquiry; that role of the Petitioner needs to be spelt out in the inquiry or in the Panchani Associates report which is not seen;

- (v) that Petitioner has not been chargesheeted by the Bank in the Criminal inquiry before the ACB which is proof enough to show that he was not involved;
- (vi) that Petitioner addressed numerous letters to the Chairman and CEO of the Bank expressing serious concern regarding discrepancies in loan disbursement for rickshaw loan and housing loan and copies of complaints are appended at Pages 37 to 51 of his Petition which he has read;
- (vii) that in the inquiry report, Petitioner has been indicted for causing a financial loss of Rs. 1.67 Crore to the Bank merely on the basis of the Petitioner having attended the meeting of Directors and his presence in the said meeting; that Petitioner's concerns and complaints have not been considered by the Inquiry Officer before arriving at his finding.

16.1. He has referred to and relied upon the decisions in the case of **Gajanan Pandurang Shet Parkar** (6th *supra*) and **Shriram Dhonduji Raut** (7th *supra*) in support of his aforesaid proposition. He submitted that under the bye-laws of the Bank, the employee Director cannot be an office bearer of the society and in view thereof, indictment of Petitioner was patently illegal. In support of his Petitioner's case, he

has referred to and relied upon the following questions in evidence before the Inquiry Officer to highlight that in view of the answers given by the Bank's witness, his Petitioner cannot be indicted for causing any financial loss to the Bank:-

प्रश्न:—	रिक्षा व गृह कर्ज मंजुर करण्याच्या प्रोसेस मध्ये उदय शिरोडकर यांचा कोणत्याही प्रकारे सहभाग नव्हता?
उत्तर:—	रिक्षा कर्ज मंजुर करण्याच्या प्रोसेसमध्ये उदय शिरोडकर यांचा सहभाग नव्हता परंतु संचालक मंडळाच्या सभेमध्ये संचालक म्हणून त्यांनी सदर रिक्सा कर्जांना कार्यान्वित मंजुरी दिलेली आहे. गृह कर्ज स्कुटीनी कमीटी मध्ये त्यांचा सहभाग होता तसेच संचालक मंडळाच्या सभेमध्ये त्यांनी गृह कर्जांना मंजुरी दिलेली आहे.
प्रश्न:—	तपासणी नंतर रिझर्व्ह बँकेने भंडारी बँकेला रु.५.०० लाखाचा दंड केला होता. त्या नंतर उदय शिरोडकर यांनी बँकेला दि.१८.८.२०१० रोजी पत्र देवून नियम बाह्य कर्ज वाटपामुळे दंड झाला असून त्या दंडाची रक्कम संबंधीत अधिका—याकडून वसूल करणेबाबत शिरोडकरांनी मागणी केली होती?
उत्तर:—	होय. बचावाच्या खुलाश्यात त्यांनी त्या पत्राची प्रत जोडलेली आहे.
प्रश्न:—	बँकेने दाखल केलेल्या क्लेम ऑफिडेव्हिट सोबत दाखल केलेल्या पुराव्याच्या यादी मध्ये नमुद अनुक्रमांक ७ नुसारच्या एफ आय आर ची प्रत मी आता आपणास दाखवीत असून त्यात रिक्साकर्ज गैर व्यवहारात उदय शिरोडकर यांचे नाव कोठेही नमुद नाही?
उत्तर:—	होय. उदय शिरोडकर यांचे नाव नमुद नाही.
प्रश्न:—	बँकेने दाखल केलेल्या क्लेम ऑफिडेव्हिट सोबतच्या पुराव्याच्या यादीतील अ.क्र. १५ नुसार बँकेने गृह कर्ज गैरव्यवहाराबाबत दि.१.६.२०११ रोजी दाखल केलेल्या एफ.आय.आर. ची प्रत दाखली असून त्यामध्ये एफ आय आर मध्ये नमुद आरोपींनी गृहकर्जाचा गैरव्यवहार केल्याचे नमुद आहे तसेच उदयकुमार शिरोडकर यांचे नाव त्या आरोपी मध्ये नमुद नाही?
उत्तर:—	गृह कर्जाच्या सदर एफ आय आर मध्ये गैर व्यवहार नमुद आहे. उदयकुमार शिरोडकर यांचे नाव नमुद नसले तरी भंडारी बँकेचे संचालक मंडळ असे नमुद केलेले आहे.
प्रश्न:—	उदयकुमार शिरोडकर हे बँकेचे पेड एम्प्लॉई असल्याने त्यांचे बँकेच्या मॅनेजमेंट व बिझनेसशी काहीही देणे घेणे नव्हते?
उत्तर:—	उदयकुमार शिरोडकर हे बँकेचे पेड एम्प्लॉई असल्याने त्यांचे बँकेच्या मॅनेजमेंट व बिझनेसशी काहीही देणे घेणे नव्हते परंतु ते कर्मचारी संचालक असल्याने त्यांचा या गैरव्यवहाराशी संबंध येतो.
प्रश्न:—	रिक्षा कर्ज समिती व गृह कर्ज समिती या दोन्ही कमीट्यांमध्ये उदयकुमार शिरोडकर यांचा सहभाग नव्हता व नावही नव्हते?
उत्तर:—	हे म्हणणे खरे आहे.
प्रश्न:—	उदय शिरोडकर व इतर कर्मचा—यांनी प्रयत्न केल्यामुळे बँकेची काही वसुली

	होवु शकली उदा. दि.१२.८.२०११ रोजी या कर्मचा—यांच्या प्रयत्नामुळे चाळीस लाख वसुली झाली त्या बाबतचे व्यवहार मी आता आपणास दाखतील आहे. याच रक्कमेतुन पुढे ३० थकीत रिक्सा कर्जापोटी रु.३९.८६ लाख वसुल करण्यात आले आहेत म्हणजे शिरोडकर यांच्या मुळे ही वसुली झाली असे मला म्हणावयाचे आहे.
उत्तर:—	होय. हे शिरोडकर व इतर कर्मचा—यांच्या प्रयत्नामुळे ही वसुली झाली ही वस्तुस्थिती आहे.
प्रश्न:—	राकेश पटेल या रिक्सा एजंटच्या वडिलांच्या नावे असलेले घर शिरोडकर यांनी शोधले व त्या बाबत दि.२५.५.२०११ रोजी बँकेला पत्र दिले होते परंतु बँकेने त्यावर कोणतीच कारवाई केली नाही?
उत्तर:—	होय. शिरोडकर व इतर कर्मचारी यांनी तसे पत्र दिले होते परंतु घर वडीलांचे नावे होते.
प्रश्न:—	गृह कर्जाच्या गैरव्यवहाराला जे जबादार होते त्यांच्याच हस्ताक्षराचे नमुने अँन्टीकरप्शन कडे पाठवीले होते त्यात शिरोडकर यांचे नमुने नव्हते?
उत्तर:—	हे म्हणणे बरोबर आहे.

17. Mr. Rebello, learned Advocate has appeared for Petitioner in WP No. 11926/2019. At the outset, he has adopted the submissions and arguments advanced by Mr. Anturkar, Mr. Damle and Mr. Kanetkar and sought leave of the Court to make additional submissions. He has made the following additional submissions:-

- (i) that under bye-law 29B(2), his Petitioner cannot be deemed to be an officer bearer of the Bank since he is an employee Director;
- (ii) that the definition of Officer under Section 2(20) of the said Act does not apply to the appointment of the Petitioner;
- (iii) that his Petitioner did not file the indemnity bond and therefore under Section 73(1)(AB), he is deemed to

have vacated his position and office as employee Director;

- (iv) that his Petitioner addressed repeated complaints between 26.04.2008 and 03.11.2011 which are appended to the Petition raising serious concerns and discrepancies regarding loan allotment which were not considered by the Bank;
- (v) that his Petitioner was appreciated for his efforts in collecting an outstanding amount of Rs. 5.24 Crore on behalf of the Bank during the same period;
- (vi) that his Petitioner has been indicted for causing loss of Rs. 1.74 crores on the ground that he has attended the meetings of the Board of Directors of the Bank during which loan files were signed; hence he has sought quashing of the inquiry report and the impugned order.

18. Mr. Sachin Pawar, learned Advocate has appeared for Petitioner in WP No. 12094/2019 who was a Director. He has adopted the submissions made by the learned Senior Advocates and Advocates and sought quashing of the inquiry report / order and the Appellate authority's order.

C. RESPONDENTS' SUBMISSIONS:-

19. **PER CONTRA,** Dr. Warunjikar, learned Advocate has appeared for the Official Liquidator of the Bank. He has after giving a brief history of the incorporation of the Bank submitted that in the present case, rickshaw loan fraud pertains to four branches and home loan fraud pertains to one branch of the Bank. He submitted that initially 35 delinquents were proceeded against with whereas the present bunch of Writ Petitions pertains to 19 Directors / employees only. He submitted that 5 persons were exonerated at the stage of Section 88 inquiry, 3 persons succeeded at the Appeal stage, 3 persons accepted the order passed in the inquiry report and in fact, paid the amount of liability determined against them, 4 persons did not challenge the inquiry order and the Appellate Authority order and one person expired during the interregnum (his legal heirs have also not challenged the impugned orders). Thus, he submitted that at least eight persons have accepted the inquiry Report under Section 88 and the liability determined against them and this Court should take the said fact into cognizance.

19.1. He submitted that provisions of Section 88 of the said Act have been adequately highlighted and explained in the decision of **Gajanan Pandurang Shet Parkar** (6th *supra*) referred to and relied upon by the Petitioners and according to him, the Inquiry Officer has

in fact followed the steps contemplated thereunder. He submitted that according to Petitioners since some of them were exonerated in the first inquiry, a second inquiry is not permissible under the said Section for the same cause of action. While referring to the impugned inquiry Report, he submitted that in the present case, previous finding prior to Section 88 inquiry is not a requirement of the inquiry. He has vehemently argued that without a previous finding an inquiry under Section 88 can be proceeded with on the basis of the material available before the Inquiry Officer. In support of this proposition, he has referred to and relied on the decision in the case of **Gulabrao Sakharam Shelke Vs. The Commissioner for Co-op & Registrar for Co-op. Societies & Ors.**¹³ and more specifically paragraph Nos. 9 and 10 thereof and contended that an inquiry under Section 88 can be held merely on the basis of an Audit Report also.

19.2. He submitted that the effect of marginal note in respect of Section 88 of the said Act cannot be read independently and contended that the marginal note cannot be made applicable alone and the main Section would have to be read by the Court for the purpose of interpretation of the note. In support of this proposition, he has referred to and relied upon the following decisions:-

- (i) **Maharashtra Tubes Ltd Vs.
State Industrial & Investment Corporation of**

13 2015 SCC OnLine Bom 6119

Maharashtra Ltd & Ors¹⁴;

(ii) Tara Prasad Singh & Ors. Vs.
Union of India & Ors.¹⁵;

(iii) Union of India Vs.
National Federation of the Blind & Ors.¹⁶

19.3. He submitted that in the instant case, assuming for the sake of argument that some of the Petitioners / Directors were in fact exonerated in the first round of inquiry, it needs to be understood that the first round was merely a premature exercise for ascertaining the issue of financial loss by the bank. According to him even though, some of the Petitioners were exonerated, still an inquiry under Section 88 can only be complete after gathering the evidence and therefore, the second inquiry conducted by Respondent No. 2 on the basis of the material made available was permissible in law. He submitted that in the first inquiry no conclusive loss was determined and all that it concluded was to give an action plan about the financial loss caused to the Bank and the general assessment thereof.

19.4. He has drawn my attention to Panchani Associates Special Audit report and contended that the findings in the said report cannot be read in isolation and the same will have to be looked into on the basis of the material available before the Auditor. He submitted that the material that was available before the auditor was in the nature of

14 (1993) 2 SCC 144

15 (1980) 4 SCC 179

16 (2013) 10 SCC 772

the entire record maintained in the computer system of the bank which has been verified by the Auditor. He submitted that though all physical files in respect of rickshaw loan and housing loan were seized by the ACB and removed from the custody of the bank, still it cannot be stated that Panchani Associates did not have adequate material before themselves to arrive at the loss caused due to the rickshaw loan and the housing loan fraud. He has minutely read the Panchani Associates report to contend that the said Audit report is the *sine qua non* of the inquiry proceedings and it need not mention each and every material detail of the fraud committed by the Petitioners. According to him Panchani Associates report has given the right direction for the inquiry under Section 88 on the basis of the entire record of the Bank which was seen and verified and which was maintained in the computer system and accessed by said Auditor.

19.5. He submitted that the impugned report under Section 88 investigated and prepared by Respondent No. 2 is based on sufficient material which was available with Panchani Associates namely books, records, financial statements, annexures and lists maintained in the computer system of the bank. He submitted that seizure of the files by ACB would not mean that the entire record, *inter alia*, required for investigation was not available with the Bank. That the Special Auditor being an expert has clearly opined that there were misdealing

in the financial affairs of the Bank and has adequately laid the foundation for conduct of the Section 88 inquiry. He submitted that the decisions referred to and relied upon by the Petitioners have all been passed in the context of holding a departmental inquiry and the yardstick which governs the Section 88 inquiry is entirely different. He has persuaded me to read excerpts from the report under Section 88 prepared by Respondent No. 2 in respect of some of the Petitioners namely Pramod L. Manjrekar, Ratilal Pitambar Bhole and Vishwajeet K. Raut which appear at internal page Nos. 165, 173 and 184 of the inquiry Report dated 25.09.2018. He submitted that in each of the respective Petitioner's case the Inquiry Officer has carried out a detailed exercise over a period of time and several hearings for almost 102 days and after scrutinizing and analyzing the role of the Petitioners and relying upon the number of meetings attended by them during their tenure and the amount disbursed by them through their respective branch, has determined the extent of their individual liability.

19.6. He has referred to and relied upon a compilation of documents of 101 pages which is submitted across the bar at the time of hearing. At page 98 of the said compilation, he has drawn my attention to the loan policy of the Bank which was resolved and adopted by the Board of Directors of the Bank on 12.07.2007. He

submitted that the said policy was in vogue at the then time and has specifically relied upon clause 8 thereof which refers to loan application receipt, processing, scrutiny and recommendation. Under clause 8, there are eight conditions prescribed in the loan policy which decipher that all loan applications have to be scrutinized at the branch in which they are received and it shall be the responsibility of the respective Branch Manager to ensure that all conditions for availing loan have been complied with. He submitted that in addition thereto, it was the duty and responsibility of each Branch Manager to ensure that the disbursed loan was used for the designated purpose only and not otherwise. That apart he submitted that it was the fundamental duty of the Branch Manager to ascertain the positive net worth of the borrower / applicant who sought loan from the Bank to ensure its timely recovery. He has relied upon clause 10 of the loan policy which refers to staff / officer's accountability and contended that it was the solemn duty of the Branch Manager to ensure that recovery would be possible in all cases where loan was advanced failing which it would be entirely at the risk and consequences of the loan sanction committee and / or the Branch Manager who disbursed the loan. He submitted that while computing and assessing the role of each and every delinquent Director / Branch Manager, the Inquiry Officer has considered the material on record and the defences of the concerned delinquent persons and only thereafter ascertained their liability on

the basis of their role and / or attendance in the meeting during which the loan was sanctioned or disbursed from the branch.

19.7. He submitted that in the event if, the Directors and / or Branch Managers were still aggrieved with non-compliance of the proper procedure, it was open to them to record their dissent in the meeting attended or through correspondence. He submitted that provisions of Section 73 gave an adequate opportunity to raise such dissent. However in the present case dissent has not been recorded by any of the Directors even once. He submitted that the statutory provisions give a three tier opportunity for recording dissent if the Director / Branch Manager is not satisfied with the redressal of his grievance. He submitted that the aforementioned loan policy was handed over to each and every Director and Branch Manager at the inception on their appointment as it envisaged their duty and role. He submitted that while indicting and determining liability of each Director and Branch Manager, a separate chart of the meetings attended and the number of files signed by the concerned delinquent has been referred to and relied upon in the inquiry Report and hence, it cannot be alleged that the inquiry under Section 88 was undertaken with non-application of mind. He submitted that Annexure 'A' & 'B' to the inquiry Report is a detailed summary in figures of ascertainment of liability of each of the delinquent whose role and accountability has

been discussed in the substantive report. He submitted that as per his record only seven Petitioners registered their request with the Inquiry Officer for seeking documents and by letter dated 29.11.2018, they were informed that the documents were already given to them earlier and if they desired to refer to and rely upon them, they were called upon to submit copies of the documents for seeking certification and authentication from the Inquiry Officer.

19.8. He submitted that assuming for the sake of argument that no action has been initiated against the loan agents appointed by the Bank, it cannot be derivated that the 19 Petitioners before the Court had no role to play in disbursement of the auto-rickshaw loan and the housing loan and merely on that ground they cannot be exonerated. He has drawn my attention to one of the loan agreement executed by the Bank with the loan agent Mr. Baliram Yadav which is at page 41 of the compilation of documents relied upon by Mr. Fatangare and contended that perusal of paragraph No. 4 of the said agreement and the subsequent paragraphs would clearly show that the bank managers have abdicated their responsibility in not taking adequate security from the loan agent as required by the loan agreement. He submitted that at certain places in the loan agreement, there were blanks.

19.9. He submitted that this Court needs to take into cognizance that by virtue of the fraud, the Bank went into liquidation affecting the

rights of 22,000 investors / depositors with the Bank. He has referred to and relied upon the decisions in case of **Arun Dattatraya Narake** (10th *supra*) and **Shriram Dhonduji Rault** (7th *supra*) and urged the Court to take into cognizance the analysis of the procedure prescribed and required to be followed in a 88 inquiry under the said Act.

19.10. On the basis of the above submissions, he has prayed for dismissal of all Petitions and upholding the Enquiry Report / Order dated 25.09.2018 and the Appellate Authority's order dated 20.09.2019. Mr. Kankal, learned AGP has adopted the submissions of Dr. Warunjikar.

D. APPLICABLE LEGAL PROVISIONS:-

20. Before I advert to the submissions made by the parties, it would be apposite to refer to some of the relevant provisions of the said Act and Rules as they stood at the relevant time. Sections 83, 84, 88, 152 and 154 and Rules 71 and 72 are relevant for deciding the present Writ Petitions and are reproduced below:-

“Section 83. Inquiry by Registrar

- (1) *The Registrar may of his own motion, and shall on the application of one-third of the members of a society, himself or by a person duly authorized by him in writing in this behalf, hold an inquiry into the constitution, working and financial conditions of a society.*
- (2) *Before holding any such inquiry on an application, the registrar may having regard to the nature of allegations and the inquiry involved, require the applicant to deposit with him such sum of money as he may determine, towards the cost of the inquiry. If the allegations made in the application are substantially proved at the inquiry, the deposit shall be refunded to the applicant, and the Registrar may under Section 85, after following, the procedure laid down in that Section, direct from whom and to*

what extent the cost of the inquiry should be recovered. If it is proved that the allegations were false, vexatious or malicious, the Registrar may likewise direct that such cost shall be recovered from the applicant. Where the result of the inquiry shows that the allegations were not false, vexatious or malicious, but could not be proved, such cost may be borne by the State Government.

- (3)(a) *All officers, members and past members of the society in respect of which an inquiry is held, and any other person who, in the opinion of the officer holding the inquiry is in possession of information, books and papers relating to the society, shall furnish such information as in their possession, and produce all books and papers relating to the society which are in their custody or power, and otherwise give to the officer holding an inquiry all assistance in connection with the inquiry which they can reasonably give.*
- (b) *If any such person refuses to produce to the Registrar or any person authorized by him under sub-Section (1), any book or papers which it is his duty under clause (a) to produce or to answer any question which put to him by the Registrar or the person authorized by the Registrar in pursuance of sub-clause (a) the Registrar or the person authorized by the Registrar may certify the refusal and the Registrar after hearing any statement which may be offered in defence punish the defaulter with a penalty not exceeding five hundred rupees. Any sum imposed as penalty under this Section shall on the application by the Registrar or the person authorized by him to a Magistrate having jurisdiction be recoverable by the Magistrate as if it were a fine imposed by himself.*
- (4) *The result of any inquiry under this Section shall be communicated to the society whose affairs have been investigated.*
- (5) *It shall be competent for the Registrar to withdraw any inquiry from the officer to whom it is entrusted and to hold the inquiry himself or entrust it to any other person as he deems fit.*

Section 84 INSPECTION OF BOOKS OF INDEBTED SOCIETY.

- (1) *On the application of a creditor of a society who--*
- (a) *satisfies the Registrar that the debt is a sum then due, and that he has, demanded payment thereof and has not received satisfaction within reasonable time, and*
- (b) *deposits with the Registrar such sum as the Registrar may require as security for the costs of any inspection of the books of the society, the Registrar may, if he thinks it necessary, inspect or direct some person authorized by him by order in writing in this behalf to inspect, the books of the society.*
- (2) *The Registrar shall communicate the result of any such inspection*

to the applicant, and to the society whose books have been inspected.

- (3) It shall be competent for the Registrar to withdraw any order of inspection from the officer to whom it is entrusted, and to inspect himself or entrust it to any other person as he deems fit.
- (4) The powers of inspection conferred on the Registrar by this Section may be exercised by him of his own motion in respect of any society, which is indebted to Government or for which share capital (wholly or partly) is provided by Government or where any financial interest of Government is otherwise involved.

Section 85. Costs of Inquiry and inspection

- (1) Where an inquiry is held under Section 83 or an inspection is made, under the last preceding Section, the Registrar may apportion the costs, or such part of the costs, as he may think just between the society, the members or creditors demanding the inquiry or inspection, the officers or former officers and the members or past members or the estates of the deceased members of the society:

Provided that, -

- (a) no order of apportionment of the costs shall be made under this Section unless the society or person or the legal representative of the deceased person liable to pay the costs thereunder, has or have been heard, or has or have had a reasonable opportunity of being heard;
- (b) the Registrar shall state in writing the grounds on which the costs are apportioned.
- (2) No expenditure from the funds of a society shall be incurred, for the purpose of defraying any costs in support of any appeal preferred by any person other than the society against an order made under the foregoing sub-Section.

Section 88. Power of Registrar to assess damages against delinquent promoters, etc.

- (1) Where, in the course of or as a result of an audit under Section 81 or an inquiry under Section 83 or an inspection under Section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the Auditor or the person authorized to make inquiry under Section 83 or the person authorized to inspect the books under Section 84 or the Liquidator under Section 105 or otherwise that any person who has taken any part in the organization or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of commencement of such audit or date of order for inquiry, inspection or winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorized by him in that behalf may frame

charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charge, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorized under this Section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

- (2) *The Registrar or the person authorized under sub-Section (1) in making any order under this Section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.*
- (3) *This Section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.*

Section 152. Appeals.

- (1) *An appeal against an order or decision under Sections 4, 9, 11, 12, 13, 14, 17, 18, 19, 21, 21 A, 29, 35, 77 A, 78, 79, 88, and 105 including an order for paying compensation to a society shall lie,--*
 - (a) *if made or sanctioned or approved by the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the State Government,*
 - (b) *if made or sanctioned by any person other than the Registrar, or the Additional or Joint Registrar on whom the powers of the Registrar are conferred, to the Registrar.*
- (2) *Where an appeal against an order or decision to the Cooperative Appellate Court has been provided under this Act, it shall lie to the Co-operative Appellate Court.*
- (3) *An appeal under sub-Section (1) or (2) shall be filed within two months of the date of the communication of the order or decision.*
- (4) *Save as expressly provided, no appeal shall lie against any order, decision or award passed in accordance with the provisions of this Act; and every such order, decision or award shall, whether expressly provided or not, be final, but shall always be subject to the provisions for revision in this Act; and where an appeal has been provided for, any order passed on appeal shall likewise be final, but be subject to such revision provisions.*

Section 154. Revisionary powers of State Government and Registrar.-

- (1) *The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-Section (9) of Section 149, where any decision or order has been passed by any sub ordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as*

to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

- (2) *Under this Section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.*
- (2A) *No application for revision shall be entertained against the recovery certificate issued by the Registrar under Section 101 unless the applicant deposits with the concerned society, fifty per cent. amount of the total amount of recoverable dues.*
- (3) *No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.*
- (4) *The State Government may, by order, direct that the powers conferred on it by this Section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government.*

Rule 71. Procedure and principle for the conduct of inquiry and inspections.

- (1) *An order authorizing inquiry under Section 83 or inspection under Section 84 shall, among other things, contain the following :-*
 - (a) *the name of the person authorized to conduct the inquiry or inspection;*
 - (b) *the name of the society whose affairs are to be inquired into or whose books are to be inspected ;*
 - (c) *the specific point or points on which the inquiry or inspection is to be made, the period within which the inquiry or inspection is to be completed and report submitted to the Registrar ;*
 - (d) *cost of inquiry ;*
 - (e) *any other matter relating to the inquiry or inspection.*
- (2) *A copy of every order authorizing inquiry under Section 83 or inspection under Section 84 shall be supplied to the federal society or societies to which the society in respect of which the order is issued is affiliated.*
- (3) *If the inquiry or inspection cannot be completed within the time*

specified in the order referred to in sub-rule (1), the person conducting the inquiry or inspection shall submit an interim report stating the reasons for failure to complete the inquiry or inspection and the Registrar, if he is satisfied, grant such extension of time for the completion of the inquiry or inspection as he may deem necessary or he may withdraw the inquiry or inspection from the officer to whom it is entrusted and hold the inquiry or inspection himself or entrust it to such other person as he deems fit.

- (4) *On receipt of the order referred to in sub-rule (1) the person authorized to conduct the inquiry or inspection shall proceed to examine the relevant books of accounts and other documents in possession of the society or any of its officers, members, agents or servants and obtain such information or explanation from any such officers, members, agents or servants of the society in regard to the transactions and working of the society as he deems necessary for the conduct of such inquiry or inspection.*
- (5) *The person authorized to conduct the inquiry or inspection shall submit his report to the Registrar, on all the points mentioned in the order referred to in sub-rule (1). The report shall contain his findings and the reasons therefor supported by such documentary or other evidence as recorded by him during the course of his inquiry or inspection. He shall also specify in his report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire cost or a part thereof may be apportioned, amongst the parties specified in sub-Section (1) of Section 85. The Registrar shall pass such orders thereon as may be considered just after giving a reasonable opportunity of being heard to the person or persons concerned.*
- (6) *The costs of the inquiry or inspection apportioned by the Registrar under sub-Section (1) of Section 85 shall be recovered as provided in Section 86. The Registrar may direct that such costs or any part thereof shall be paid in the first instance from the funds of the society or in case of inspection, from the amount deposited by the creditor under clause (b) of sub-Section (1) of Section 84 and then recovered and repaid to the society or the creditor, as the case may be.*

Rule 72. Procedure for assessing damages against delinquent promoters, etc, under Section 88

- (1) *On receipt of a report referred to in Section 86 or otherwise the Registrar or any other person authorized by him may make such further inquiries as he may deem necessary regarding the extent to which the person who has taken any part in the organization or management of a society or any deceased, past or present officer of the society has misapplied or retained, or become liable or accountable for, any money or property of the society, or has committed misfeasance or breach of trust in relation to the society.*
- (2) *On the completion of the further inquiries under sub-rule (1)*

where necessary, the Registrar or the person authorized by him shall issue a notice to the person or persons concerned furnishing him or them with particulars of the acts of misapplication, retention, misfeasance or breach of trust and the extent of his or their liability involved therein and calling upon him or them to put in statements in his or their defence within fifteen days of the date of issue of the notice.

- (3) *On receipt of the statements referred to in sub-rule (2), the Registrar or the person authorized by him, if he is satisfied that there are reasonable grounds for holding the person or persons liable, shall frame charges.*
- (4) *The person or persons concerned shall, after the charges are framed be asked to put in his statement in defence and to indicate the documentary or oral evidence which he would like to produce. The Registrar or the person authorized by him may permit production of other documentary or oral evidence, if considered necessary, subsequently.*
- (5) *The Registrar or the person authorized by him, shall thereafter record the evidence led by the society or the person or persons concerned and take on record the documents proved by them and shall thereafter fix a date for hearing arguments of both the parties.*
- (6) *On the day fixed for hearing under sub-rule (5), the Registrar or the person authorized by him, shall hear the arguments and may pass his final orders on the same day or on any date fixed by him within sixty days from the date on which the hearing was completed. On the date so fixed, the Registrar or as the case may be, the person authorized by him shall, make his final order, either, ordering repayment of the money or return of the property to the society together with interest at such rate as may be specified by him or to contribute such amount to the assets of the society by way of compensation in regard to misapplication, retention, misfeasance or breach of trust as may be determined or may reject the claim submitted on behalf of the society.*
- (7) *The Registrar or the person authorized by him, may also provide in his order for the payment of the cost of the proceeding under this rule or any part of such cost as he thinks just.*
- (8) *The Registrar or the person authorized by him shall furnish a copy of his order, under sub-rule (6) to the party concerned within ten days of the date on which he makes his final order."*

(emphasis supplied)"

E. OBSERVATIONS AND FINDINGS:-

20.1. It is seen that under Section 83(3)(a) of the said Act, the Inquiry Officer is empowered to seek information from all officers,

members and past members of the Society or any other person, 'who in his opinion' are in possession of such information and to produce all books and papers relating to the Society which are in their custody or power and the aforesaid persons are required to give all assistance in connection with the inquiry. Under Rule 71(4), the Inquiry Officer is empowered to obtain such information or explanation from any officer, members, agents or servants of the Society in regard to the transaction and working of the society 'as he deems necessary' for the conduct of such inquiry. A plain reading of Section 83(3)(a) read with Rule 71(4) discloses that it is the 'discretion' of the Inquiry Officer whether or not to call for such information or documents. If the Inquiry Officer is of the opinion that no useful purpose would be served in calling for the information or that no assistance is necessary from any past member or any other person in connection with the inquiry, or that the documents in the custody of the Society are sufficient for the purposes of the inquiry, he may exercise his discretion accordingly. This exercise of discretion by the Inquiry Officer is left to his subjective satisfaction and would depend on the facts and circumstances of each case. In the present case, it is clearly seen that Panchani Associates Audit Report was cursory and did not provide any details of liability, hence the Inquiry Officer in the present case ought to have called for all such information from the Bank and Petitioners in the first instance. He ought to have had

examined all such material referred to in Panchani Associates' Report. However, save and except indicting all Petitioners for the outstanding recovery of the Bank, no exercise has been carried out to spell their role in commission of any fraudulent act by them.

20.2. Plain reading of Section 88 of the said Act discloses that the Registrar is empowered to frame charges against any person who has taken part in the organization or management of the Society and who has been prima facie found guilty of misapplication or retention of any money or property of the Society, or has been guilty of misfeasance or breach of trust in relation to the Society and further provides that after giving reasonable opportunity to the person to answer the charges and, if the same are found proved, then to make an order requiring him to repay or restore the money as the case may be to the Society. As seen the ambit is very wide but provides a structural inquiry. On plain reading of said Section 88, it cannot be said that the term 'misfeasance' in the said Section would apply to any and every sort of offence which can be taken note of for initiating proceedings under section 88 of the said Act. The expression 'misfeasance' has specific and distinct meaning and the said term has not been used in the said Section so as to include all types of offences for which a person in the management of the Society can be proceeded against under the said section. Otherwise the Legislature would not have used different

expressions for different types of acts and omissions in the said Section. Section 88 refers to six types of offences, namely, misapplication or retention of money or liability or accountability for money or property of the Society as well as misfeasance and breach of trust. Some of those offences would require performance of certain positive acts, whereas certain offences can be said to have been committed on account of non-performance of some other acts. The offence of misapplication or retention of money would necessarily result from performance of certain acts may be in contravention of certain duties and obligations whereas liability or accountability for money may arise either from performance of certain other acts or an account of omission to perform certain duties. Besides, undoubtedly the term 'misfeasance' has not been defined in the said Act. The term 'misfeasance' is defined in Black's Law Dictionary and means the improper performance of some act which a person may lawfully do, whereas the term 'nonfeasance' means omission of an act which a person ought to do and the term 'malfeasance' is the doing of an act which a person ought not to do at all. In other words the terms 'misfeasance', 'nonfeasance' and 'malfeasance' have different meanings and they are not synonymous or similar. On the contrary 'misfeasance' requires performance of some act whereas 'nonfeasance' would mean non-performance of an act. When a person is required to do certain things lawfully but performs it improperly, it cannot be said that he is

guilty of nonfeasance. However, certainly he can be accused of an offence of misfeasance. Similarly, if a person is required to do certain acts in terms of the provisions of law and he fails in his obligation, he can be accused of an offence of nonfeasance. In other words, for the proceedings to be initiated for misfeasance under Section 88 it is necessary that such person must be guilty of improper performance of some act which he has lawfully done. In the present case, it is clearly seen that role of any of the Petitioners is not determined, nor any act is stated which attributes to commission of fraud by them. It is seen that rickshaw loans were defaulted and inquiry suggested a fraud by Loan agents after verification with the RTO by Panchani Associates, whereas regarding housing loans, it is admittedly a case of NPA in all 69 cases. Perusal of the charge and the inquiry shows that Petitioners are accused of fraud and failure to cause a financial loss to the Bank on the basis of their signing the loan files and disbursing the loan amount through its branches. Role of Petitioners as for that matter they having played any active role in the fraud for causing financial loss is not spelt out in any document or order so as to indict them.

20.3. Chapter VIII of the said Act deals with the aspect of audit, inquiry, inspection and supervision. Sections 81 to 90 are the relevant Sections. The entire chapter, therefore, needs to be read together specifically when it comes to inquiry and / or action under Section 88

of the said Act. There are connected and related Rules also which are required to be followed by all parties including the Registrar.

20.4. Plain reading of these Sections clearly contemplate respective obligations of members/managing committee, general body of the society and related and connected officers of the Department. The mechanism is clear that in case of default by the members and/or by the managing committee or even in case of irregularities, the Department's officers, basically the Registrar to take appropriate action as and when necessary specifically in every financial year. The procedure/mechanism is also provided in case of defaults and on non-compliance of those provisions by the members/managing committee. The point, in the present case, is the audit and/or the Audit Reports of Panchani Associates which is the foundation to initiate proceedings under Section 88. Panchani Associates Report clearly spells out the two reasons for commission of rickshaw loan fraud and housing loan fraud. It is not the Bank's case that Petitioners have illegally enriched themselves. For the reasons mentioned in the Special Audit Report, fraud is not stated or explained with reference to the Petitioners. This is an important circumstance for consideration of inquiry under Section 88 in the present case.

20.5. It may thus be stated that Auditor's report needs to provide all particulars of defects or irregularities of the Bank/society in case of

financial irregularities, misappropriation and/or embezzlement of funds or fraud. It is also an obligation of the Auditor or auditing firm to investigate and report the *modus operandi* and the entrustment and the amount involved. The accounting irregularities and its implication on financial outlook needs to be indicated in detail in the report with corresponding effects on the profit and the loss. Even the functioning of the Managing Committee / Directors / Branch Managers needs to be gone into and if any irregularities or violations are observed or reported, it is necessary to fix the responsibility for such irregularities or violations.

20.6. It is also seen that in the Section 88 inquiry, it was incumbent upon Respondent No. 2 to furnish material / documents to the Petitioners. The same is admittedly not done in the present case. Most of the Petitioners despite making requests have been denied the documents and material by Respondent No. 2. The record speaks for itself.

20.7. Section 88 contemplates inquiry and provides for power and authority to assess the damages. The law of damages/compensation has various facets. It may be nil and it may be thrice and/or four times than the amount so involved. Therefore, the process of assessing damages itself requires trial. None of the Petitioners before me have admitted the amount / liability and so also it is not the case of

Respondent-Bank that they have assessed and/or there is a clear report with reasons that it has suffered loss of a particular amount on the date of the Audit Report and the role and liability of the respective Director / Branch Manager is spelt out for the said loss suffered. Reading the inquiry report reveals no role depicted therein save and except a mechanical arithmetic exercise of dividing the outstanding amount between the Petitioners who attended the meetings and signed the files and the Branch Managers who disbursed the loans through their branches.

20.8. Petitioners in the present group of 19 Petitions can be compartmentalized into two broad groups namely Directors and Branch Managers. It is seen that the procedure adopted for conduct of inquiry under Section 88 in respect of all Petitioners is identical and same. However, considering the role, duty and obligations of each of the Petitioner as to whether he is a Director or Branch Manager, the distinction would be therefore somewhat different. But such an exercise is completely missing.

20.9. The basic challenge in the present proceedings is to the inquiry Report dated 25.09.2018 prepared by Respondent No. 2 indicting and holding Petitioners liable for a proportionate financial loss caused to the Bank in various denominations ranging from 50

Lacs to Rs. 2.21 Crore in respect of each of the Petitioners. In the first group comprising of 9 Petitions, it is seen that all Branch Managers had joined the Bank during the decade of 1980 / 1990 as a clerk and had risen to the position of Branch Manager by the year 2011 when the Bank went into liquidation. Record indicates that controversy for which their indictment is done is for the period 2007 to 2009. This is gathered from Annexure A to the Inquiry Report submitted under Section 88 wherein the date of sanction of loan for all 982 rickshaw loan cases is between 2007 and 2009. Before we look at the role of the Branch Managers, it would be pertinent to minutely refer to the element of fraud as envisaged by the Special Statutory Auditor, Panchani Associates, Chartered Accountants in the present case. This essentially goes to the root of the matter. The attribute to fraud by the Special Auditor is contained in a four page report which has been deliberated extensively by both the sides before me. For the purpose of convenience and in order to appreciate the controversy, it would be pertinent to reproduce the two excerpts, *inter alia*, pertaining to rickshaw loan fraud and housing loan fraud as appearing in verbatim therein as enumerated in the said report. This is so because the said report is the *sine qua non* for the steps to be taken for conduct of inquiry under Section 88:-

"1. RICKSHAW LOAN FRAUD

A suspected Fraud has been discovered by Bank in Case of

Rickshaw Loans. The Goregoan Branch, Andheri Branch, Bhandup Branch and Bhayandar Branch of the Bank had disbursed Rickshaw Loans. It was noticed that Rickshaw Loan overdue was continuously increasing and it was difficult for branches to recover the said amount at their end. Hence, all files were called at Head Office and recovery of these loans was made centralized. In mean time, when it was enquired with RTO about validity of RC books it was found that some RC books were fake and fabricated by Loan Agents. In March 2011, it was noticed that Rickshaw Loan Overdue has kept on swelling and in April 2011 bank lodged a complain against three Rickshaw Loan Agents in Economic Offence Wing at Crawford Market.

At the same time, some third party has also lodged complaint against Board of the Bank in Anti Corruption Bureau regarding forgery, doctoring documents and connivance. In this connection Anti Corruption Bureau has seized 1,076 files from the bank and enquiry is still going on. The estimated amount involved is Rs. 13.3 crore.

As Anti Corruption Bureau had seized majority of files, our extent of checking was restricted to that extent.

2. HOUSING LOAN FRAUD

Another suspected Fraud was discovered by Bank in case of Housing Loans. The Dadar Branch of Bank had disbursed Housing Loans from April 2008 to August 2009 to around 69 BEST Employees of Rs. 10 Lacs each. After paying few installments the borrowers stopped paying Bank. This entire loan became NPA and in March 2011 Rs. 682.58 lacs were classified in D1 category and provision of 20% was made on these loans. To recover the amount bank has taken following steps:

- (i) In 69 cases notices have been issued to employees under SURFAESI Act 2002. Out of above 6 cases are pending in Collector's Office, Thane for Possession Award.*
- (ii) For 69 cases resolution has been passed by Board to file complaint U/s 101 of MCS Act, 1960, Out 69 cases, 34 cases are already filed in court, out of 34 cases, bank has received award in 9 cases. Demand Notice and Warrant for attachment is already issued. Balance 25 cases are under hearing and 35 cases are yet to be filed in court of law.*
- (iii) Bank has also lodged complaint in Economic Offence Wing against Builders, Developers and Borrowers as it is believed by bank that borrowings were made to defraud the bank.*
- (iv) At the same time some third party has also lodged complaint against Board of the Bank in Anti Corruption*

Bureau' for disbursing loan against fake documents. In this connection Anti Corruption Bureau has ceased all 69 housing loan files from the bank and enquiry is still going on. The estimated amount involved is Rs 6.83 crores.

As Anti Corruption Bureau had seized all the above files, we were not in position to check these files.

20.10. It is seen in the present case that the inquiry under Section 88 by the statutory authority is not carried out on the basis of the Audit Report of Panchani Associates and hence the mandate of Section 88 is violated. The misfeasance and breach of Trust is spelt out in the Audit Report and there is a clear indictment. Registrar is empowered to take action against “any person”, which is wide enough. Role for committing financial fraud is a question of fact and the role of the person committing the fraud needs to be highlighted on the basis of material evidence. Satisfaction of the Registrar in the present case, as seen, is however on completely erroneous considerations for indicting the Petitioners.

20.11. It is seen that the Special Auditor after referring to the material namely books, records, financial statements, annexures and lists maintained in the computer system and verified by him has categorically attributed and concluded the rickshaw loan fraud to submission of some fake RC books to the Bank by the loan agents. If this report is to be per se understood then *prima facie* reading of

rickshaw loan fraud as concluded in the report would clearly envisage that fraud has been committed only after disbursement of the money by the Bank to the borrowers. Report states that the Special Auditor has carried out inquiry with RTO about validity of the RC books and it was only thereafter found that some RC books were fake and fabricated by the loan agents. This would essentially mean that the fraud relating to rickshaw loan if any would essentially be committed only after the loan is disbursed to the borrower / loan agent. It is an admitted position agreed by all the parties before me that the Bank has lodged criminal complaint with ACB and inquiry is under progress as on date. Equally it is admitted that none of the 5 Loan Agents have been proceeded with by the Bank nor were they part of the inquiry undertaken. Hence, subjectively it can be assumed in the wake of the categorical finding given in Panchani Associates' report that fraud pertaining to forgery, doctination of documents and connivance is that of the borrowers and or the loan agents and the liability and responsibility cannot be that of the Bank Managers or for that matter, the Directors of the Bank. It needs to be emphasized here that due to the above reason, the rickshaw loan overdue kept on mounting and since there was no recovery, Bank was forced to lodge a complaint against three rickshaw loan agents in the Economic Offence Wing (EOW) at Crawford Market. This has been infact enumerated in the Panchani Assocaites Report itself. That apart, in so far as the housing

loan is concerned, one needs to understand the element of fraud deciphered by the Special Auditor in its report. All that the Auditor states therein is that in view of default committed by 69 employees of BEST during the said period, the loan advanced to them became an NPA and for such reason due to non recovery, a fraud has been attributed and Petitioners are held liable for causing a financial loss. The said report itself states that to recover the said amount of NPA, bank has taken several steps for recovery namely that in all 69 cases statutory notices under SARFAEI Act were issued. The Bank had passed resolution to file complaint under Section 101 of the said Act for seeking recovery of the outstanding amounts in all 69 cases. Consequently, it is also noted that 34 cases were already filed in Court and the Bank received an award in 9 cases out of them. That in the balance 25 cases pending in the Court, the same were being heard and in respect of 35 cases, the same were yet to be instituted in the Court. The present position in the above 69 cases as on date is not pleaded before me by the Official Liquidator. It is pertinent to note that in the criminal complaint filed by the bank with the EOW in respect of housing loan fraud, the same has been filed against the borrowers, developers and builders wherein the subject proposed premises were situated. Hence, indictment of Petitioners in the manner in which it has been done is not justified unless their role in the fraud is clearly spelt out and identified.

20.12. In the above background, if it was the conclusion of the Special Auditor that the Bank Managers and for that matter, the Directors had played any role whatsoever in the aforementioned two Loan frauds on the basis of the books, records, financial statements, annexures and lists which were maintained in the computer system and verified by him before preparing the report on fraud, the bank managers and Directors would have in fact been named therein and or specifically indicted. However this is not the case and it has not been done. Submissions advanced on behalf of the Official Liquidator that Panchani Associates' Special Audit Report gave a direction to the Registrar to institute the inquiry under Section 88 cannot be accepted for more than one reason. As seen, the inquiry under Section 88 has to be initiated for a misfeasance against the person concerned who is found to be guilty of improper performance of some act which he has lawfully done. Panchani Associates' report is woefully silent on any overt act attributable to the Branch Managers or for that matter, the Directors of the bank. In fact, there is no indictment of Petitioners in the said Report at all.

20.13. Official Liquidator has referred to and relied upon the loan policy in this respect and submitted that by virtue thereof, it was the

fundamental duty of the Branch Managers to scrutinize the loan applications / papers, forward them to the Management, receive the sanction, disburse the loan and ensure that the disbursed amount is used for the designated purpose. It needs to be noted that considering the extent of fraud in grant of rickshaw loans and housing loans as alluded to hereinabove, failure on the part of the Branch Managers and Directors to perform their duty is not proved at all. At this stage, it needs to be emphasized that the Bank appointed loan agents and by virtue of substantial obligations of the loan agents, they were required to recommend to the Bank through its branches the names of borrowers. Undoubtedly, Branch Managers were supposed to prepare and check the file before forwarding the same to the Bank / Management / Scrutiny Branch for scrutiny and sanction and only thereafter disburse the amount. The role of the person at this stage to complete scrutiny of documents therefore assumes importance. On careful reading the loan agreement, it is clear that it was the loan agent who was given the entire responsibility of preparing the documentation. The Branch Managers on receiving the file were required to scrutinize whether the said file was in order in the usual course and forward the same to the Scrutiny / Sanctioning Committee / Branch. It may be noted here that after receiving the file, the respective branches were required to forward the same to the Goregaon branch of the Bank which was designated as the Scrutiny

Branch for scrutiny of all loan documents. This is clear from the document / letter dated 02.11.2004 which is an appointment letter / posting letter of one of the Petitioner as Branch Manager in Goregaon branch. This letter is part of the record. It states that the Goregaon branch of the Bank was the designated branch for scrutiny of documents in respect of all loan applications. In that view of the matter, after the loan papers were scrutinized, the same were sent to the loan Sanction Committee. The loan Sanction Committee approved and granted the loan and sent it for disbursement. It needs to be revisited here that if element of fraud occurred after sanction and disbursement of the loan as envisaged by Panchani Associates Report by submitting fake RC Books in respect of vehicles and NPAs, then the Branch Managers and Directors cannot be held liable for a financial fraud. A lot of emphasis has been placed on the Inquiry Report prepared under Section 88 by Respondent No.2 by Dr. Warunjikar. What needs to be noted is that while indicting the Branch Managers and Directors, Respondent No.2 has in respect of each of the said persons, referred to and relied upon the loan policy and reproduced the same in verbatim in the manner it appears in text (which is in Marathi language) for all Petitioners. This cannot be called an exercise by following due process of law. I find much substance in the submissions made by Mr. Fatangare, Mr. Karwande and Mr. Anturkar that indictment of Petitioners in the Section 88

inquiry is purely mechanical by referring to and relying upon the clauses in the loan policy. It needs to be noted that the applications for seeking rickshaw loan by the nature of the applications itself were required to be received in the respective branches. The process of the applications had to be made by the respective branches only. What needs to be emphasized here is that these applications were received complete in all respect from the loan agents who were specifically appointed by the Bank for this very purpose. The duties, responsibilities and the role of the loan agents has been highlighted in the agreement executed by Bank with the loan agents. Both sides have heavily relied upon the same i.e. the rights and obligations of the Bank and the loan agents.

20.14. For the sake of convenience and reference, to highlight the role and responsibility of the loan agents, one such set of documents, namely the Indemnity bond dated 03.02.2010 and two affidavits / undertakings dated 03.04.2010 and 05.08.2010 executed by Baliram C. Yadav (Loan Agent) are scanned and reproduced hereunder. The said documents speak for themselves:-

Affidavit dated 05.08.2010 by Baliram C. Yadav, sole proprietor of Sai Auto Deal :

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AFFIDAVIT

I Mr. Sai Yasho C. Yadav Sole Prop. Of M/S Sai Auto Deal
carrying Business of Auto Agent i.e. arranging Auto Loans from the Bank in
favour of the owners against Hypothecation of vehicles, for recovery of the
loan, arranging fire insurance coverage, Registration of the vehicle with R.T.O.,
Registration of Hypothecation charge with R.T.O. in favour of the Bank etc.

I say that on the basis of my / our request & representation, Bhandari
Co-op. Bank Ltd. through their various branches granted loans to various Auto
Rikshaw owners against security of Hypothecation of vehicles & we
confirm that all the cases are recommended by me.

I have given my unconditional guarantee in favour of the Bank in respect in
case of any default in the Auto Loan. I undertake to repay the loan as well as
have agreed to take possession and custody of vehicles in trust & on behalf
the bank.

I say that on the basis of my guarantee given to Bhandari Co-op. Bank
Ltd, Bank has granted loans to Rikshaw owners in as many as 279
and the aggregate amount outstanding as on 31/07/2018
Rs. 24,15,192/- (Principal + Interest) I have also produced original
Registration Certificate issued by the R.T.O. to the Bank in 244
however in as much as 24 cases R.T.O. authority have not issued

CHIEF CLERK, CIVIL SUPPLY DEPT.
GOVT. OF INDIA
NEW DELHI-110001
OFFICE OF THE CHIEF CLERK
CIVIL SUPPLY DEPARTMENT
MINISTRY OF COMMERCE AND INDUSTRIES
GOVERNMENT OF INDIA
NEW DELHI-110001
DATE: 08/08/2018
TIME: 10:50 AM
PAGE NO.: 1
REF. NO.: 123456789



Book due to some Technical Problem. However in all these cases R.C. Books are likely to be issued shortly & I undertake to handover custody of the same to the Bank.

In all these cases of non issuance of R.C. Books, I confirm that Bank has disbursed the Auto Loan in my accounts / Saving Banks account of the Borrowers for onwards disbursement to the Auto Dealers / Sellers. In cases referred hereinabove in which R.C. Books are not yet issued, I confirm that I have made the payments to the Authorised dealer / Sellers & / or hold the amount of the Loan disbursed in Trust on behalf of the Bank.

I further confirm that it is my sole & absolute responsibility to repay the loans to the Bank in case of default by the Owners in my capacity as the guarantors.

Solemnly affirmed

Baliram C. Yadav
Mr. Baliram C. Yadav

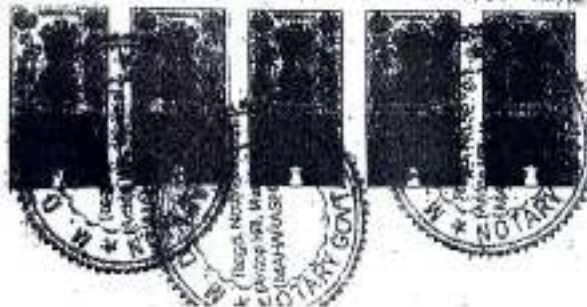
In Presence of

1) *Rajesh Patel*

2) *Mamab M. Singh*



DR. D. YADAV
B.Com, LL.B., Regd. No. 3-76
NOTARY PUBLIC, GOVT. OF INDIA
Rank: Grade No. 16, Darga Moh. Mandir,
Shanti Nagar, S. P. Rd., Anand Nagar,
Delhi (110) Telephone-406417.



Affidavit dated 03.04.2010 of Baliram C. Yadav, sole proprietor of M/s. Sai Auto Deal :

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CHANDRAMA YADAV, Sole Proprietor of M/s. Sai Auto Deal
 12098-17 + 18.doc

NOTARY
 GOVT. OF INDIA

NOTARY
 GOVT. OF INDIA

Affidavit

I, Baliram Chandrama Yadav, Sole Proprietor of M/s. Sai Auto Deal
 carrying on business of buying and selling of old and new Auto Rickshaws, make
 this Affidavit on solemn affirmation.

I say that as per my request the bank has granted various loans to the auto
 players. All these accounts have introduced by me and as per my request the bank
 has taken the decision to grant loan.

I further say that, I have extended my personal unconditional guarantee to
 repay the loan sanctioned to auto-players against the security of Auto Rickshaws.

In my personal capacity as a guarantee to the bank, I have given following
 seven cheques

Sr. No.	Cheque No.	Name of the Bank	Branch	Amount (in Rs.)
1	484996	Central Bank of India	Mina Road (E)	60,00,000/-
2	484997	Central Bank of India	Mina Road (E)	60,00,000/-
3	484998	Central Bank of India	Mina Road (E)	60,00,000/-
4	484999	Central Bank of India	Mina Road (E)	60,00,000/-
5	485000	Central Bank of India	Mina Road (E)	60,00,000/-
6	343892	Bandari Co-op. Bank Ltd.	Andheri Branch	20,00,000/-
7	343893	Bandari Co-op. Bank Ltd.	Andheri Branch	15,00,000/-

in favour of the bank with the condition that the same may be deposited towards
 the dues / outstanding liability in the loan accounts of Auto Rickshaws.

The cheques were issued against my entire free will and without any
 coercion from the bank.

NOTARY
 GOVT. OF INDIA

change
 checked
 office

33



I further say that the liability against the said cheques is binding upon me and I hereby give unconditional assurance to honour the cheques on presentation by the bank for payment.

Solemnly affirmed at Mumbai
at this 23rd day of April, 2010.

Deponent.

Before me.

Exp. and interpreted by me.

[Signature]
DR. B. R. DUBE
ADVOCATE HIGH COURT
Senior Counsel, Senior, Mumbai-15.

B. R. DUBE
B.Sc. (Hons) LL.B. Reg. No. 1047
NOTARY, GOVT. OF INDIA
11th, Lady Reson Complex,
D. S. Nagar, West, MUMBAI-400 015.



Indemnity bond dated 03.02.2010:

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Chimnarendra Co-op. Bank Ltd.
Dr. Arjunji Chavan Building
A/100, S. V. Road, Dadar (W)
Mumbai-400 028
(INSTITUTIONAL DEPT.)

NOTARY
170146
12:56
R-00002001-P05293

NOTARY
D. K. HALKANI
MUMBAI
MAHARASHTRA
REG. NO. 8105
GOVT. OF INDIA

NOTARY
S. R. DUBE
MUMBAI
MAHARASHTRA
REG. NO. 3071
GOVT. OF INDIA

INDEMNITY BOND

Gandhi
This BOND OF INDEMNITY is made and executed at
Mumbai on this 13th day of Feb. 2010 by
Mr. Baliram Chandrama Yedar of Mumbai Indian
inhabitant, Proprietor of M/S. Sai Auto Deal
(hereinafter referred to as the INDEMNIFIER)

In favour of Bhandari Co-operative Bank Limited, a
Co-operative Bank registered under the Maharashtra
Co-operative Societies Act, 1960 having registered
office at Bhandari Bank Bhavan, P. L. Kale Gurnji
Marg, Dadar (West) Mumbai- 400 028 (herein after
referred to as Bank) WHEREAS THE INDEMNIFIER
carries on business in the name and style of M/s.
Sai Auto Deal having address at 2, Yadav Chawl,
Opp. Moor Hospital, Bahran Purg, Jogeshwari (W),
Mumbai- 400 102 the sole proprietor thereof and
carries the business of buying and selling the
used cars.

NOTARY
PRADEEP S. SHANKAR
MUMBAI
MAHARASHTRA
REG. NO. 6935
GOVT. OF INDIA

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Bhandari



AND WHEREAS THE INDEMNIFIER has during the period of 10/07/2010 to 01/01/2011 along with the permit holders of rickshaws approached Bhandari co-operative bank, society registered under the Maharashtra Co-operative Societies Act, 1960 having its registered office at Bhandari Bank Bhavan; P. L. Kalo Guroji Marg, Dadar (West) Mumbai- 400 028 and branches at Dadar, Goregaon, Andheri, Bhayandar, Bhandup and Matunga and carries on business under the banking regulation Act 1949 (hereinafter referred to as the INDEMNIFIER) FOR rickshaw loan;

And whereas the bank has at the request of the INDEMNIFIER granted and disbursed term loan of Rs. 463,35,000/- (Rupees Four crore sixty three lakhs five thousand only) to the permit holder, upto 01/01/2010.

And whereas the Indemnifier execute this bond of Indemnity in favour of the bank with an undertaking to indemnify and keep bank indemnified against any loss caused to the bank for the Rickshaw loan as



36



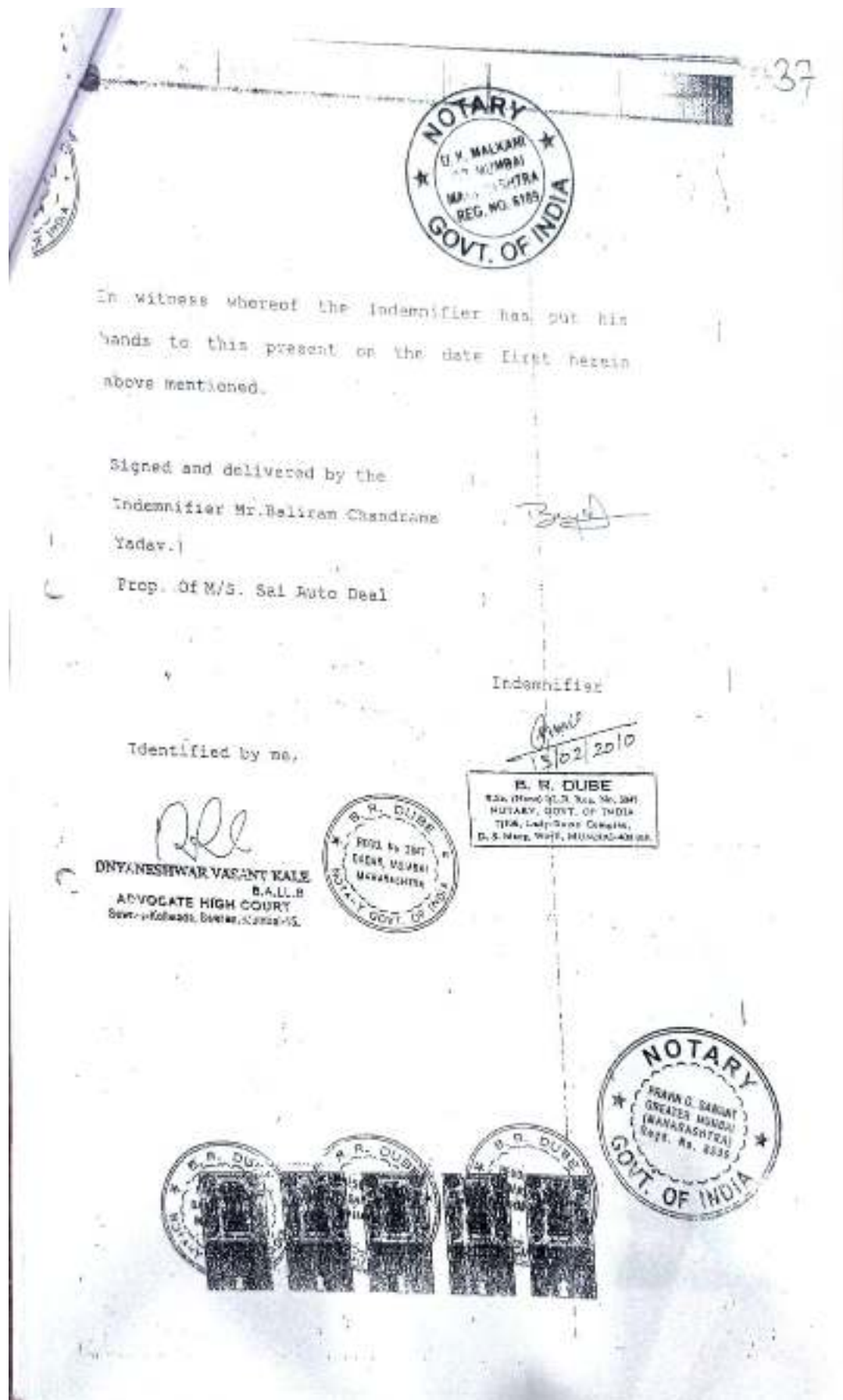
NOW THIS BOND WITNESSES AS UNDER

The Indemnifier indemnifies, saves and defends and keep indemnified saved and defended the bank for any loss, damages, compensation caused to an /or claims notices received by due to non payment of rickshaw loan by the borrowers / permits holders, granted to them by the bank in ordinary course of their business and / or the said borrowers / permit holders of the Rickshaw loan and or there are no source of recovery from the said unfit to ply for whatsoever reason or seized by the police and or any other Government Authorities including the Special Recovery Officers of any bank and for any court matters filed against the bank by or under the virtue of Rickshaw loan and / or any other ground under law and Equity, by any person/s, semi state / Central Governments and / or any quasi judicial authorities and / or any courts / Tribunal and / or by the recovery officers of any Tribunals and / or the bank.



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20.15. In the declaration dated 03.02.2010, Mr. Baliram C. Yadav has stated that the Bank has as per his request and against his undertaking to indemnify the Bank had granted rickshaw loans to the permit holders in respect of 308 persons. That the principal outstanding amount was Rs. 269.82 lacs and 270 defaults had taken place. The said declaration also records that he is liable to pay to the Bank if the loans given to the permit holders are not paid by them as he is legally liable as a guarantor for any loss incurred by the Bank and has indemnified the Bank. This declaration is given for giving security against the indemnity given by the loan agent. Perusal of the said declaration reveals that the details of the secured property are not mentioned and are blank, but that cannot be a reason for indicting the Branch Managers for the monetary loss caused to the Bank in the facts and circumstances discussed above.

20.16. The next most important document which needs discussion for fixation of liability is the Memorandum of Understanding dated 13.02.2010 which has been executed by Baliram C. Yadav, the loan agent and the CEO of the Bank. The following clauses in the MOU are crucial and important in understanding for fixation of liability in the present case. Mr. Baliram Chandrama Yadav has approached the Bank for prudent deployment of the Bank's funds for lending to auto rickshaw operators identified by him and the amount of advances to

be enhanced from time to time as per the Bank policy and RBI Directives.

20.17. Clause Nos. 1 to 4 of the MOU are extremely pertinent and read thus:-

“1. Mr. Baliram Chandrama Yadav has to identify potential operators (hereinafter called as borrower or operator) desirous of obtaining Bank finance towards the cost of auto Rickshaw / business (owing the vehicle on H.P.A. scheme).

2. Mr. Baliram Chandrama Yadav shall verify the credit worthiness of these hirers and guarantors in the line with the guidelines of Bank and after verification of borrower's credit worthiness shall refer the applications for loans with all relevant documents.

3. The bank may at its own discretion and on merit lend to these persons (hereinafter referred to as the operator) on such terms and conditions as may be applicable from time to time and shall have a right and charge by way of Hypothecation on the vehicles financed by the Bank.

4. Mr. Baliram Chandrama Yadav shall register the vehicles with RTO, Hypothecated to the bank and submit the R.C. book after marking of lien in the records of RTO to the Bank forthwith.”

20.18. From the above it is seen that it was the duty of the loan agent to verify the credit worthiness of the borrowers and only after verification of their credit worthiness refer their applications for loan with all relevant documents. That apart, it was the loan agent's mandatory duty to register the vehicles with RTO which were hypothecated to the Bank and submit the RC book to the bank after marking of lien in the record of the RTO. If such was the nature of the obligation of the loan agent, then reading the same with Panchani Associates Report would clearly mean that the indictment of the Branch Managers and Directors of the Bank would be on the basis of

wrong consideration. Once it is verified by the Special Auditor and placed on record that the rickshaw loan fraud occurred due to submission of fake RC books by the Loan agents, then the role of the Branch Manager and the Directors recommending the loan, preparing the file or for that matter, even scrutinizing the file, sanctioning the loan and disbursement of the loan would be all such acts prior to the issuance of the RC book. Hence, the entire liability and responsibility of registering the vehicles with the RTO which were hypothecated with the Bank and submitting the same after marking the lien in the RTO record was not that of the Branch Managers or for that matter of the Directors but of the Loan Agents. It needs to be stated here that 5 Loan Agents were appointed by the Bank for advancement of rickshaw loans.

20.19. The MOU further refers to the rights and obligations of the Bank as also the rights and obligations of the loan agents. Clause Nos. 5 to 10 are extremely crucial in the context of fixation of liability for the loss / alleged fraud caused / committed with the Bank. These clauses are of such significant importance that they need to be reproduced herein as they appear :-

“5. RIGHTS OF THE BANK

5.1 The Bank shall have the right to receive payments for installments directly as per the payment procedure in clause no. 8.

5.2 In case of delay in the payments, the bank shall be entitled to charge penal interest at the rate of 2% per annum on the overdue amount.

5.3 *The bank shall ever exclusive right to deal with the operator directly in all matters concerning this agreement, except in case where powers have been delegated specifically to Mr. Baliram Chandrama Yadav by the bank to carry out specific acts.*

5.4 *Bank reserves the right to appoint its own valuer (for valuation of vehicle) R.T.O. Agent and Insurance agent.*

6. OBLIGATION OF THE BANK

6.1. *The bank shall hereby nominate, constitute and appoint to Mr. Baliram Chandrama Yadav to do the following Acts, Deeds and things.*

- *Repossession of vehicles where necessary*
- *To complete the R.T.O. (Regional Transport Office) formalities and documentation through Bank approved R.T.O. Agents.*
- *Taking of the insurance policies through Bank approved Insurance Agent.*

6.2 *The Bank shall terminate the agreement with the operator only by handing over the termination documents.*

6.3 *The Bank shall provide necessary documents as required by operator which is given in the possession of bank.*

7. OBLIGATIONS OF Mr. Baliram Chandrama Yadav

7.1 *Mr. Baliram Chandrama Yadav shall arrange the execution of the documents regarding the loan by the operators as per the guidelines of the bank. The documents are to be signed in the presence of bank officer.*

7.2 *Mr. Baliram Chandrama Yadav shall ensure that the lien is marked in R.C. Book is in favour of the bank made by the RTO authority.*

7.3 *It is the sole responsibility of Mr. Baliram Chandrama Yadav to ensure that the insurance cover for the vehicle during the pendency of the loan is obtained and in case of accidents or mishap the insurance claims are satisfactorily settled.*

7.4 *Mr. Baliram Chandrama Yadav shall ensure that the operator / borrower will pay the regular installment to the bank and it is the sole responsibility of Mr. Baliram Chanrdrama Yadav to get the loan installments regularly collected.*

7.5 *In the event of the committing defaults in repayment of borrowing 2 consecutive installments, Mr. Baliram Chandrama Yadav shall comply with the conditions as laid down in clause 7.9*

7.6 *Mr. Baliram Chandrama Yadav will stand as one of the sureties for each loanee and thereby guarantee repayment of loan installments.*

7.6.1 *The dealer / Agent shall have authority to collect Money from borrower only if there is a specific written consent / authority*

from the bank.

- 7.8 *In case the operator defaults in paying two consecutive installments to Bank (hereinafter referred to as the defaulting operator) Mr. Baliram Chandrama Yadav shall ensure that, he makes arrangements satisfactory to the bank to provide to the operator funds to foreclose the loan A/c outstanding with upto date interest and other charges.*
- 7.9 *The bank has every right to recall the outstanding amount of loan sanctioned in favour of operator or debit the amount of loan outstanding of the operator to account of Mr. Baliram Chandrama Yadav Agent, in case of non submission of the requirement to the bank.*
- 7.10 *Bank may change the terms and conditions of sanction of loan from time to time as per the policy of the Bank. Bank reserves the right to modify or discontinue the facility with or without giving any reason. Bank expressly disclaims all warranties of any kind whether express or implied including but not limited to imputed warranties of merchantability fitness for particular purpose and in ringment. Bank takes no warranty regarding any goods / vehicle purchased or obtained by the way of loan through the dealer / agent or any transactions entered into through the dealer / agent. Bank will not be liable for direct / indirect / incidental or consequential damages resulting from any goods / vehicle purchased from the dealer / Agent.*
- 7.11 *All money due and payable by Mr. Baliram Chandrama Yadav to the Bank shall be paid by an Account Payee Cheques or Bank Draft in favour of the bank on or before the due date of such payment.*
- 7.12. *Mr. Baliram Chandrama Yadav will maintain deposit equivalent to 2% of the loan sanctioned in each case with the bank in the name of or a period equivalent to repayment of the loan renewable on each expiry till the full repayment of the loan account of the borrower under the scheme. Such deposit will carry interest at the usual bank rates on deposit and related receipt duly discharged by Mr. Baliram Chandrama Yadav will be lodged with the bank, along with the letter authorizing the bank to appropriate such deposit to appropriate towards overdue outstanding loan by the bank to Mr. Baliram Chandrama Yadav will have no right to ask for loan or any other facility on the above deposit.*
- 7.13 *The onus of fixing Hypothecation charge in favour of the bank and to bring the vehicle for periodical inspection should be solely on Mr. Baliram Chandrama Yadav.*
- 7.14 *The bank shall give notices to. Mr. Baliram Chandrama Yadav every month mentioning to all status of the installment, amount of overdue and the amounts pending for taking action of seizing the vehicle.*

8. BORROWERS OBLIGATION

PAYMENT PROCEDURES.

- 8.1 Borrower will be primarily responsible for repayment of installment to the bank.
- 8.2 The vehicle will be comprehensively insured by the Bank and Bank is authorized to pay insurance premium by debiting borrowers' loan / saving bank accounts during the period of loan.
- 8.3 The original bill of the authorized dealer/Agent along with stamped receipt in favour of the bank for the purchases of vehicles shall be produced and kept in custody of the Bank.
- 8.4 Each Borrower has to apply in Bank's prescribed Loan Application form along with his latest photograph, Driving License, Photocopy of Ration card Batch Copy, permit copy and two personal sureties / guarantors.
- 8.5 The ceiling per borrower will be as per the Bank policy. The vehicle purchased will be hypothecated to the bank. The registration and insurance charges will be borne by the borrower.
- 8.6 The loan and interest shall be repaid as per bank, policy. There should be no default or delay in repayment of loan.
- 8.7 The rate of interest will be as per the Bank policy and RBI guidelines and will be charged on the outstanding reduced balance. The interest rate is liable to be changed as per RBI Directives / decisions of Board of Directors of the Bank from time to time. The penal interest will be levied as per bank rule on delayed repayments / installments / defaults / Non-compliance.
- 8.8 Membership of Borrowers. will be as per the policy of the Bank.
- 8.9 Each borrower has to pay share capital as per the policy of the Bank.
- 8.10 Bank would in no way be responsible for the defective vehicle, or any defects in the vehicle if any, supplied by the dealer/Agent/ not for the delay in the delivery Letter / certificate from the borrower on receipt of the vehicle stating that he has received the same in good and operative condition and also free from all apparent defects should be submitted to the Bank.
- 8.11 Loan will be disbursed only after receiving Hypothecation certificate of the vehicles and mortgage of Lien in favour of bank from RTO Mumbai.
- 8.12 All documents will be signed in the presence of the responsible officer of the bank.
- 8.13 The loans for delivery van / pickup van & mini door CNG auto rickshaw will be sanctioned only to the permit holder and Valid driving license holder.
- 8.14 The disbursement of loan would be directly in favour of dealer/Agent on receiving confirmation from the borrowers that he has received the vehicle and other formalities are complied

with.

8.15 The borrower should produce the vehicle for inspection to the bank on demand. Bank can seize the vehicle and sell it if the installments are overdue.

9.0 LOAN AGAINST USED VEHICLES

The following additional terms and conditions are for used vehicles sanctioned by board.

9.01 Loan against Hypothecation of Auto Rickshaw would be collaterally secured by Personal Guarantees of 2 independent persons and Agent will be the third guarantor of the loan.

9.02 Loan amount will be as per the policy of the Bank.

9.03 Borrower should be native of Mumbai.

10. OTHER:

10.01 The parties mutually agree that in matters or situations not governed by this agreement, the parties may mutually decide upon such matters/ situation and shall make provision for the exchange of consent letters, such consent letters becoming part of this agreement.

10.02 The bank shall have right to reject the proposal without assigning any reason. The bank shall have exclusive right to amend the terms and conditions of the scheme.”

20.20. From the above rights and obligations of the Bank and the loan agent the following derivations are made:-

- (i) that it was the right of the Bank to receive installment directly and in the case of delay, charge interest. The bank had appointed the loan agent for specific acts which were obligatory in nature and find mention in clause 6.1. Under the said clause, it was the obligation of the loan agent to complete the RTO formalities and documentation through the bank approved RTO agents. Hence, if any such fraud was committed in respect of RC books as contemplated by Panchani Associates, it

could only be attributable to the loan agent and / or the RTO agent. Clause 7 is significant as it entirely places the responsibility for arranging the execution of documents for loan on the loan agent as per the bank's guidelines, marking of lien in the RC book, ensuring that the insurance cover and claims are satisfactorily settled, ensuring that the borrower will pay the regular installments of the bank and most importantly to get the loan installments regularly collected, that he shall stand as surety for each loanee, shall have authority to collect money from the borrower, shall pay all such money due and payable by account payee cheque in favour of the Bank on or before the due date of such payment, shall maintain the deposit equivalent to 2% of the sanctioned loan amount at all times, which are specific conditions and which are of such a nature that the same if violated would entail the rickshaw loan accounts showing an outstanding amount due and payable to the Bank.

- (ii) In such circumstances, the role of the Branch Managers and Directors upto disbursement of the loan can never be held as an act or omission for commission of any

fraud on the Bank and thereby causing a consequential financial loss to the Bank for which they are held accountable. It needs to be emphasized that the Branch Managers and Directors have done their duty in the normal course of business as required by them and the NPA account due to non-payment of installments by the borrowers cannot be said to be a liability for which they are to be held responsible for a fraudulent act.

(iii) If such an analogy as stated in the inquiry report is accepted then each and every Branch Manager in any bank, be it a co-operative bank or a nationalized bank, wherever / whenever there is NPA, can be held liable for commission of financial fraud and liability can be foisted on him personally as also on the Directors of the bank. This is not the position in law so envisaged in so far as the issue of recovery of outstanding amounts is concerned or for that matter proceedings under Section 88 of the said Act are concerned.

(iv) In the present case, the manner in which the inquiry has progressed needs to be seen. Before we proceed to analyze the nuances of the Report under Section 88, it needs to be mentioned that under clause 8.14 of the

MOU, the disbursement of loan was done by the Bank directly in favour of the dealer / agent on receiving confirmation from the borrower that he has received the vehicle and other formalities were complied with. That apart the loan advanced by the Bank against hypothecation of the auto-rickshaw was collaterally secured by personal guarantees of two independent persons and the agent as the third guarantor.

20.21. Hence, in the above background, analysis of the inquiry conducted by the Respondent No. 2 in indicting the Petitioners needs to be seen. Perusal of report clearly states that it is based upon material evidence received by the Inquiry Officer in response to the statutory notice issued under Section 72 of the said Act. It is seen that evidence on behalf of the Bank has been led and one Smt. Anagha Karalkar, an employee / representative / then CEO of the Bank had deposed, whereas in rebuttal, the Branch Managers and Directors have given their evidence in defence. Though it is argued by Petitioners that the deponent on behalf of the Bank had no authorized sanction to depose and she could not produce any authority on behalf of the Bank, it is not anybody's case that Smt. Anagha Karalkar was not an officer of the Bank. The Bank nominated Smt. Karalkar to give evidence and she has deposed on behalf of the Bank before the Statutory Authority.

Petitioners have heavily relied upon the answers given by the Bank's witness in respect of the applicability of the loan policy, role of the Directors and Branch Managers and contended that on the basis of the answers given by the deponent, it is clear that no case whatsoever has been made out against them. I have perused the questions and answers of the Bank's witness on Page Nos. 385 to 406 which are annexed as Exhibit in the lead Petition i.e. WP No. 9377/2022 argued by Mr. Fatangare. Also I have minutely perused the evidence of the Petitioner therein which is placed at Page Nos. 424 to 432 of the said Petition. On reading the depositions, it is clear that no case whatsoever of fraud is made out against any of the Petitioners. Bank's witness has categorically deposed that under the bye-laws, none of the Bank's Managers / employees / Officers had any authority to sanction loan. Further regarding rickshaw loan, she has clearly acknowledged the MOU with the Loan agent and the obligations stated therein. She has also confirmed that for sanction of rickshaw loans, there was a separate committee established.

21. From minute perusal of the evidence of the Bank's witness, it is seen that none of the amounts of which recovery is sought to be made from each of the Petitioners is stated therein and on what basis. Bank's witness in her deposition has categorically admitted that one of the loan agent namely Baliram C. Yadav had given 7 cheques to the

Bank regarding the outstanding rickshaw loan amount, out of which 4 cheques were deposited and were dishonoured and Section 138 proceedings were pending in respect thereof. Further, she could not state the reasons for not depositing the remaining 3 cheques worth several Crores given by the agent to the Bank. She has deposed that there were 5 Loan agents appointed by the Bank namely Sai Auto Deal (Baliram C. Yadav), Rakesh Patel, Shri. Balaji Auto, Manish Auto Deal and Vardhan Auto Deal. Record also indicates that one Gurukrupa Auto Deal was also appointed as loan agent. Further it is seen that she did not produce and prove a single original document or certified copies of any document in evidence to prove the liability of each of the Petitioners.

F. ORDER:-

22. In view of the above, I am inclined to accept the submissions of Mr. Fatangare and Mr. Anturkar in the facts and circumstances in which the Section 88 inquiry was conducted. I find that there is an inherent jurisdictional flaw committed by Respondent No. 2 while conducting the inquiry under Section 88 on the basis of Panchani Associates Report and application of the statutory provisions alluded to herein above. Hence, I do not wish to advert to and give my findings on any of the other legal submissions made by the parties under Sections 2(20) and 73 of the said Act.

23. In view of the above observations and findings, it is concluded that the liability of Petitioners for the amounts arrived at for causing financial fraud to the Bank cannot be sustained. The inquiry report / order under Section 88 merely reiterates the loan policy (in Marathi language) for all Petitioners verbatim and is an arithmetical exercise carried out foisting liability on Petitioners without taking any cogent steps against the perpetrators of the real fraud i.e. the loan agents who were the recipients of the rickshaw loan. In so far as the housing loan fraud is concerned, it has come on record that all 69 cases were subjudiced / some were to be filed in Court at the then time. The Appellate Authority while passing identical impugned order in all cases has also committed the same error without giving finding on the principles of inquiry under Section 88 of the said Act. Both the orders namely the common order / inquiry report dated 25.09.2018 under Section 88 and individual orders, all dated 20.09.2019 passed in Appeal under Section 152 and all consequential actions taken thereafter against Petitioners call for interference of this Court for not following the statutory due process of law as discussed in the findings herein above and are therefore quashed and set aside.

24. All Writ Petitions are allowed in the above terms. All Interim Applications in the Writ Petitions accordingly stand disposed of.

25. Before parting, I would like to place on record my appreciation for the able assistance rendered by Mr. Fatangare, Mr. Karwande, Dr. Warunjikar, learned Advocates and Mr. Anturkar, learned Senior Advocate in assisting the Court in going through the voluminous record and proceedings in the present group of Petitions.

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2023.01.17
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