2024:BHC-NAG:2019

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

WRIT PETITION NO. 2188 OF 2022
WITH
WRIT PETITION NO. 2189 OF 2022
WITH
WRIT PETITION NO. 2190 OF 2022
WITH
WRIT PETITION NO. 3705 OF 2021
WITH
WRIT PETITION NO. 3786 OF 2021

W.P.NO.2188/2022

1. Supreme Agro Trade
A proprietorship Concern,
through its Proprietor
Sarvesh S/o. Narayan Gadodia,
Aged-46 years, Occupation : Business,

2. Madhududan S/o. Ramniwas Gadodia,
Aged-76 years, Occupation : Business,

3. Omprakash S/o.Ramniwas Gadodia,
Aged- 68 years, Occupation : Business,

4. Sau. Uma W/o.Hariom Agrawal,
Aged-62 years, Occupation : Business,
All the Petitioner No.1 to 4 Having
address as Hans Cotton Compound,
Near Tilak Putla, Khamgaon, District:
Buldhana – 444 303.

5. Omprakash S/o.Omkardas Chandak,
Aged-72 years, Occupation : Business,
Saraf Galli, Khamgaon,Dist. Buldhana.

6. Madanlal S/o. Laxminarayan Zunzunwala,
Aged- 70 years, Occupation : Business,
Near Hotel Rana, Jalgaon Jamod,
Dist. Buldnana.

…. **PETITIONERS.**

// **VERSUS //**

1. State of Maharashtra,
Through its Secretary, Co-operation,
Marketing and Textile Department,
Mantralaya, Mumbai-32.

2. Assistant Registrar of Cooperative
Societies, A/P Nandura Distt. Buldhana

3. Assistant Registrar of Cooperative
Societies, A/P Khamgaon Distt. Buldhana

4. The Nandura Urban Co-operative Bank
Ltd., Nandura, a society registered under
The Maharashtra Co-operative Societies
Act, 1960 and also an Urban Co-operative
Bank acting through its Branch Manager-
Khamgaon Branch, A/P- Khamgaon,
Distt. : Buldhana.

…. **RESPONDENTS.**

WITH

W.P.NO.2189/2022

1. Salasar Agro Industries,
A proprietorship Concern,
through its Proprietor
Omprakash S/o. Ramniwas Gadodia,
Aged-68 years, Occupation : Business,

2. Madhududan S/o. Ramniwas Gadodia,
Aged-76 years, Occupation : Business,

3. Rajendra S/o.Jugalkishore Gadodia,
Aged- 62 years, Occupation : Business,

All the Petitioner No.1 to 3 Having
address as Hans Cotton Compound,
Near Tilak Putla, Khamgaon, District:
Buldhana – 444 303.

4. Gopal S/o. Brijmohan Zunzunwala,
Aged-60 years, Occupation : Business,
Behind Hotel Regency, Near Tower Chowk,
Shrawagi Plot, Akola, Dist. Akola.

…. PETITIONERS.

// VERSUS //

1. State of Maharashtra,
Through its Secretary, Co-operation,
Marketing and Textile Department,
Mantralaya, Mumbai-32.

2. Assistant Registrar of Cooperative
Societies, A/P Nandura Distt. Buldhana

3. Assistant Registrar of Cooperative
Societies, A/P Khamgaon Distt. Buldhana

4. The Nandura Urban Co-operative Bank
Ltd., Nandura, a society registered under
The Maharahstra Co-opeerative Societies
Act, 1960 and also an Urban Co-operative
Bank acting through its Branch Manager-
Khamgaon, Distt. : Buldhana.

…. RESPONDENTS.

WITH

W.P.NO.2190/2022

1. M/s. Pawan Traders,
   A Partnership Firm,
   acting through its Partner
   Rajendrakumar S/o. Jugalkishore
   Gadodia, Aged 62 years,
   Occupation : Business,

2. Rajendrakumar S/o. Jugalkishore Gadodia,
   Aged 62 years, Occupation : Business,
   Partner of M/s. Pawan Traders,

3. Sau. Pushpadevi W/o.Narayan Gadodia,
   Aged 64 years, Occupation : Business,
   Partner of M/s. Pawan Traders,

4. Sau. Sumitraadevi W/o.Omprakash Gadodia,
   Aged 63 years, Occupation : Business,
   Partner of M/s. Pawan Traders

5. Pradeep S/o.Omprakash Gadodia,
   Aged 36 years, Occupation : Business,

6. Smt. Seemadevi Wd/o. Santosh Gadodia,
   Aged 53 years, Occupation : Business,

7. Sudeep S/o.Santosh Gadodia,
   Aged 25 years, Occupation : Business,

8. Harry S/o.Santosh Gadodia,
   Aged 30 years, Occupation : Business,

9. Sarvesh S/o. Narayan Gadodia,
   Aged 46 years, Occupation : Business,

   All the Petitioner No.1 to 9 having
   address as Hans Cotton Compound,
   Near Tilak Putla, Khamgaon, District:
   Buldhana – 444 303.

10. Sau. Radha W/o. Shyamsundar Agrawal,
Aged 66 years, Occupation : Business,
Near Honda Showroom, Alshi Plot,
Akola, Dist. Akola.

…. **PETITIONERS.**

// **VERSUS** //

1. State of Maharashtra,
Through its Secretary, Co-operation,
Marketing and Textile Department,
Mantralaya, Mumbai-32.

2. Assistant Registrar of Cooperative
Societies, A/P Nandura Distt. Buldhana

3. Assistant Registrar of Cooperative
Societies, A/P Khamgaon Distt. Buldhana

4. The Nandura Urban Co-operative Bank
Ltd., Nandura, a society registered under
The Maharashtra Co-operative Societies
Act, 1960 and also an Urban Co-operative
Bank acting through its Branch Manager-
Khamgaon Branch, Khamgaon, Distt. :
Buldhana.

…. **RESPONDENTS.**

WITH

W.P.NO.3705/2021

1. M/s. Reliable Tradelink,
A Partnership Firm
acting through its Partner
Sarvesh S/o. Narayan Gadodia,
Aged- 45 Years, Occupation: Business,

2. Sarvesh S/o. Narayan Gadodia,
Aged-45 years, Occupation : Business,
Partner of M/s. Reliable Tradelink.

3. Lakhiprasad S/o.Ramniwas Gadodia,
   Partner of M/s. Reliable Tradelink.
   Aged- 65 years, Occupation : Business,

4. Krishna S/o. Vijay Gadodia,
   Partner of M/s. Reliable Tradelink.
   Aged- 34 Years, Occupation : Business.

5. Vijaykumar S/o.Ramniwas Gadodia,
   Aged- 63 years, Occupation : Business,

6. Pradeep S/o.Omprakash Gadodia,
   Aged- 36 years, Occupation : Business,

7. Rajendra S/o.Jugalkishore Gadodia,
   Aged- 60 years, Occupation : Business,

   All the Petitioner No.1 to 7 Having
   address as Hans Cotton Compound,
   Near Tilak Putla, Khamgaon, District :
   Buldhana – 444 303.

…. <u>PETITIONERS.</u>

// VERSUS //

1. State of Maharashtra,
   Through its Secretary, Co-operation,
   Marketing and Textile Department,
   Mantralaya, Mumbai-32.

2. Assistant Registrar of Cooperative
   Societies, A/P Nandura Distt. Buldhana

3. The Nandura Urban Co-operative Bank
   Ltd., Nandura, a society registered under
   The Maharashtra Co-operative Societies
   Act, 1960 and also an Urban Co-operative
   Bank acting through its Branch Manager-
   having its office at A/P APMC Branch,
   Nandura, Distt – Buldhana.

…. <u>RESPONDENTS.</u>

WITH

W.P.NO.3786/2021

1. M/s. MCG Spinners,
A Partnership Firm
acting through its Partner
Narayan S/o. Chhaganlal Gadodia,
Aged- 70 Years, Occupation: Business,

2. Narayan S/o. Chhaganlal Gadodia,
Aged-70 years, Occupation : Business,
Partner of M/s. MCG Spinners

3. Vijay S/o.Ramniwas Gadodia,
Aged- 63 years, Occupation : Business,

4. Sau. Meenadevi w/o.Rajendra Gadodia,
Erstwhile Partner of M/s. MCG Spinners
Aged- 57 Years, Occupation : Business.

5. Smt. Seemadevi Wd/o. Santosh Gadodia,
Erstwhile Partner of M/s. MCG Spinners
Aged- 52 Years, Occupation : Business.

6. Mukesh S/o. Narayan Gadodia,
Aged- 44 years, Occupation : Business,

7. Krishna S/o. Vijay Gadodia,
Aged- 34 years, Occupation : Business,

All the Petitioner No.1 to 7 Having
address as Hans Cotton Compound,
Near Tilak Putla, Khamgaon, District :
Buldhana – 444 303.

.... **PETITIONERS.**

// **VERSUS** //

1. State of Maharashtra,
   Through its Secretary, Co-operation,
   Marketing and Textile Department,
   Mantralaya, Mumbai-32.

2. Assistant Registrar of Cooperative
   Societies, A/P Nandura Distt. Buldhana

3. The Nandura Urban Co-operative Bank
   Ltd., Nandura, a society registered under
   The Maharashtra Co-operative Societies
   Act, 1960 and also an Urban Co-operative
   Bank acting through its Branch Manager-
   having its office at A/P Main Branch,
   Nandura, Distt – Buldhana.

.... **RESPONDENTS.**

Shri Atharva Manohar, Advocate for Petitioners.
Ms Payal Bawankule, A.G.P. for Respondent No.1 to 3/State.
Shri R.K.Thakkar, Advocate a/w Ms Monisha Agrawal, Adv. & Shri Ashwin Deshpande, Advocate for Respondent-Bank.

CORAM : ANIL S. KILOR, J.
DATE OF RESERVING THE JUDGMENT : 08/11/2023
DATE OF PRONOUNCING THE JUDGMENT: 09/02/2024

JUDGMENT :

1. Heard.

2. **RULE**. Rule made returnable forthwith. Heard finally by consent of the parties.

3. The present petitions have been filed challenging the impugned orders granting Recovery Certificates under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act of 1960")

The brief facts of the present case are as follows:

4. That in Writ Petition Nos. 2188 of 2022 and 2189 of 2022 the petitioners are debtors of respondent No. 4 bank. Respondent No. 4 bank granted a loan to petitioner No. 1, a proprietorship concern. Petitioners are alleged to be guarantors of the loan granted by Respondent No. 4. Respondent No. 4 filed an application under Section 101 of the Maharashtra Co-operative Societies Act, 1960. Respondent No. 2 started proceedings under Section 101. Later, the said proceedings were transferred to Respondent No. 3, and the order was passed and a recovery certificate was issued under Section 101 of the Maharashtra Co-operative Societies Act.

5. In Writ Petition No.2190 of 2022 the petitioners are debtors of respondent no. 4 bank. Respondent no. 4 bank granted a loan to petitioner no. 1, a partnership firm. Petitioners No. 2, 3, and 4 are

partners of Petitioner No. 1. Petitioners no. 5 to 10 are alleged to be guarantors of the loan granted by Respondent No. 4. Respondent No. 4 filed an application under Section 101 of the Maharashtra Co-operative Societies Act, 1960. Respondent No. 2 started proceedings under Section 101. Later, the said proceedings were transferred to Respondent No. 3, and the order was passed and a recovery certificate was issued under Section 101 of the Maharashtra Co-operative Societies Act.

6. In Writ Petition No.3705 of 2022 the petitioners are debtors of respondent no. 3 bank. Respondent no. 3 bank granted a loan to petitioner no. 1, a partnership firm. Petitioners No. 2, 3, and 4 are partners of Petitioner No. 1. Petitioners no. 5, 6, 7 are alleged to be guarantors of the loan granted by Respondent No. 3. Respondent No. 3 filed an application under Section 101 of the Maharashtra Co-operative Societies Act, 1960. Respondent No. 2 started proceedings under Section 101, and the order was passed. A recovery certificate was issued under Section 101 of the Maharashtra Co-operative Societies Act.

7. In Writ Petition No. 3786 of 2021 the petitioners are debtors of respondent no. 3 bank. Respondent no. 3 bank granted a loan to petitioner no. 1, a partnership firm. Petitioners No. 2 and 3 are

partners of Petitioner No. 1. Petitioner Nos. 4 and 5 are erstwhile partners of Petitioner No. 1, and Petitioner Nos. 6 and 7 are alleged to be guarantors of the loan granted by Respondent No. 3. Respondent No. 3 filed an application under Section 101 of the Maharashtra Co-operative Societies Act, 1960. Respondent No. 2 started proceedings under Section 101, and the order was passed. A recovery certificate was issued under Section 101 of the Maharashtra Co-operative Societies Act.

8. I have heard learned counsel for the respective parties and perused the record.

9. Shri Atharva Manohar, learned counsel for the petitioners submitted that the impugned orders as well as the Recovery Certificates are without jurisdiction, in view of Sections 18 and 34 of the Recovery of Debts and Bankruptcy Act, 1993.

10. It is submitted that Article 246 of the Constitution of India specifies the legislative power and competence of Parliament and the respective State Legislatures. Under Clause 1 of Article 246, Parliament has exclusive power to make laws with respect to matters enumerated in List I of the VIIth Schedule of the Constitution of India (The Union

List). Under sub-clause(3), the State Legislature has exclusive powers to make laws with respect to maters numerated in List 2 of the VIIth Schedule. Pertinently, the power under sub-clause 3 is made subject to legislative power of Parliament to make laws in respect of matters specified in the Union List and the Concurrent List.

11. It is further submitted that Entry 45 of the Union List deals with banking. Entry 32 of the State List reads as 'Interpretation, Regulation and Winding up of Corporations, other than those specified in List-I, and Universities, unincorporated trading, Literary Scientific, religious and the other societies and associations cooperative societies.' It is submitted that interpretation, regulation and winding up of cooperative societies is a State subject, whereas, the exclusive power to legislate as regards banking activities carried out by such cooperative societies vests with Parliament.

12. It is submitted that the Maharashtra State Legislature enacted the Maharashtra Cooperative Societies Act, 1960 to regulate cooperative societies within the State of Maharashtra. Various kinds of societies have been defined by the said Act. A cooperative bank is defined in Clause 10 of Section 2 of the Act to mean a society which is

doing the business of Banking as defined in Clause (b) of sub-section(1) of Section 5 of the Banking Companies Act, 1949 (Now the Banking Regulation Act, 1949) (hereinafter referred to as “the BR Act”), and including any society which is functioning or is to function as a cooperative agriculture and rural multipurpose development bank. The Maharashtra Cooperative Societies Act is a general statute, which also deals with cooperative banks in the State of Maharashtra.

13. It is submitted that in the BR Act, banking has been defined under Section 5(4) as 'the accepting for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise'. The term 'banking company' has been defined in section 5(c) as any company which transacts the business of banking in India. Section 6 of the Act deals with forms of business in which banking company may engage. From a perusal of Section 6, it is clear that grant of loan and advances and recovery thereof is an essential facet of the business of banking.

14. It would argue that, Part V was added to the BR Act by Amending Act No. 23 of 1965, thereby making the Act applicable to cooperative societies. By Section 56 (a),references to banking company are required to be construed as references also to cooperative bank. By

the new amendment, deep and pervasive control over cooperative banks is being exercised by the Reserve Bank of India. Post amendment, it is now crystal clear that operative banks are banks within the meaning of the Banking Regulation Act, 1949.

15. It is submitted that, under the Recovery of Debts and Bankruptcy Act, 1993, banks are defined in section 2(b) and the term "Banking Companies" under Section 2(e) of the BR Act, it is therefore, submitted that the Recovery of Debt and Bankruptcy Act is applicable to cooperative banks as well, in so far as cooperative banks are banking companies under the BR Act.

16. It is submitted that Section 3 of the Recovery of Debts and Bankruptcy Act provides for establishment of a Debt Recovery Tribunal. Section 17 provides for jurisdiction, powers and authority of the debt Recovery Tribunal. The Debt Recovery Tribunal has jurisdiction, power and authority to entertain and decide applications from banks and financial institutions for recovery of debts due to such banks and financial institutions. Similarly, under Section 18 of the Recovery of Debts and Bankruptcy Act, exclusive jurisdiction as regards recovery of debts has been conferred upon the Debt Recovery Tribunal. Section 18 provides that no Court or other authority shall have, or be entitled to

exercise, any jurisdiction, power or authority in relation to matters specified in Section.

17. It is submitted that Section 34 of the Recovery of Debts and Bankruptcy Act provides that the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instruments having effect by virtue of any law other than the said Act. It is submitted that sub-section 2 of Section 34 provides that the provisions of the Act or the Rules made thereunder shall be in addition to, and not in derogation of the provisions of the second statutes. It is argued that the Maharashtra Cooperative Societies Act is not included in sub-section (2). This makes it amply clear that section 18 of the Act operates as a complete bar to filing of applications under Section 101 of the Cooperative Societies Act for recovery of dues by cooperative banks. The remedy under Section 101 will be saved in respect of claims below Rs. 10,00,000/-, as the Recovery of Debts and Bankruptcy Act does not apply in respect of debts below that amount, as per Section 1.

18. Shri Thakkar learned counsel for the respondent No.4, submits that, the Co-ordinate Bench of this Court in Writ Petition No.691/2022 was dealing with the similar contention are tried to be

raised in the present petition and the Court has considered the said issue and it is also held in para No.13 that, "there is no conflict created by providing additional procedures under section 13 of Securitisation act and to adopt a procedure which may so choose."

19. It is submitted that the respondent No.4 the present petition is filed with an ulterior motive only to delay the proceedings of the recovery of the dues of the bank who has filed the proceedings under Section 101 of the MCS Act and the certificate is already issued in the said matter and to delay the said recovery, the present petitioner has filed the petition with an malafide intention to avoid the recovery instead of challenging the said recovery certificate under section 154 the present petition is filed to create an obstruction to recovery of the cooperative bank i.e. respondent no.4 and as such the present petition is devoid of merits and is nothing but an attempt to delay the recovery of the bank.

20. It is submitted that, the present petitioner had availed loan from the respondent bank and has not repaid the said dues with malafide intention and wants to dupe the money of the bank which is apparent from the present matter and to avoid the said recovery, the present petition is filed to delay the said recovery or to create the obstruction in the recovery and the prayer to that effect are to be seen in the present

matter as there is an alternate remedy under section 154 of the MCS Act and as such the present petition is liable to be dismissed with costs, in the interest of justice.

21. It is submitted that in view of the aforesaid judgment and the Act as mentioned herein above, it is an admitted position on record that, the present petitioners are liable to pay the dues to the bank i.e. respondent No.4 and has committed default of making the payment of the bank which is public money and the present petitioners are trying their level best to delay the recovery of the bank by hook or crook by filing litigations to delay the recovery of the bank and as such the present petition is liable to be dismissed in the interest of justice.

22. Shri Ashwin Deshpande, learned counsel for the respondent submitted that one of the controversy (question) which arises in the present case is that the jurisdiction (competency) of the courts and authorities under the 1960 Act to entertain disputes pertaining to the debts owed (being a core banking activity) to the co-operative banks in light of the enactment of the legislation (RDB Act, 1993 and the SARFAESI Act, 2002) by the Parliament under List I Entry 45. In support of his submission he has placed reliance on the judgment of the

Supreme Court of India in the case of *Panrurang Ganpati Chaugule ..vs.. Vishwasrao Patil, Murgud Sahakari Bank Ltd.*, reported in **(2020) 9 SCC 215**.

23. He further submits that the Hon'ble Apex Court has held that the Parliament by enacting the RDB Act, 1993 and SARFAESI Act, 2002 had provided an additional remedy to the Cooperative Banks, in addition to the remedies available under the Cooperative Societies Act Maharashtra Cooperative Societies Act, 1960). Thereby not giving exclusive jurisdiction to anyone fora.

24. He further submits that it is not possible to accept the submission that the fora under the Act of 1960 do not have the jurisdiction to entertain the recovery proceedings.

25. In light of the rival submissions of the parties, I have perused the record and the impugned orders.

26. The issue involved in the present writ petitions, has already been answered and considered by the Hon’ble Supreme Court of India in a reference made in view of conflicting decisions in *Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd. and Ors.,* reported in **(2007) 6 SCC 236**, *Delhi Cloth & General Mills Co. Ltd. v. Union of*

India and Ors., reported in **(1983) 4 SCC 166**, *T. Velayudhan Achari and Anr. v. Union of India and Ors.*, reported in **(1993) 2 SCC 582** and *Union of India and Anr. v. Delhi High Court Bar Association and Ors., reported in* **(2002) 4 SCC 275**, in the case of *Panrurang Ganpati Chaugule ..vs.. Vishwasrao Patil, Murgud Sahakari Bank Ltd.,* reported in **(2020) 9 SCC 215.**

27. The Hon'ble Supreme Court of India, in the case of *Panrurang Ganpati Chaugule* (supra), had dealt with the following questions :

> *(1) Whether 'cooperative banks', which are cooperative societies also, are governed by Entry 45 of List I or by Entry 32 of List II of the Seventh Schedule of the Constitution of India, and to what extent ?*
>
> *(2) Whether 'banking company' as defined in Section 5(c) of the BR Act, 1949 covers cooperative banks registered under the State Cooperative Laws and also multiState cooperative 29 (1955) 1 SCR 773 30 (1964) 5 SCR 975 societies ?*
>
> *(3)(a) Whether cooperative banks both at the State level and multiState level are 'banks' for applicability of the SARFAESI Act ?*

(3)(b) Whether provisions of Section 2(c) (iva) of the SARFAESI Act on account of inclusion of multiState co-operative banks and notification dated 28.1.2003 notifying cooperative banks in the State are ultra vires ?

28. The Hon'ble Supreme Court of India in the above referred judgment, after considering the numerous authorities on this issue and after discussing the same in detail, has observed thus:

> *"45. Thus, it is apparent that deep and pervasive control by the Reserve Bank of India is provided on primary credit society, which is involved in banking. As per the provisions of the BR Act, 1949, no business can be done by any cooperative society without obtaining a licence from the Reserve Bank of India. The very existence of the co operative banks is dependent and is governed by the Reserve Bank of India Act as well as the BR Act, 1949. The aforesaid legislations are under Entry 38 and Entry 45, respectively, of List I of the Constitution of India.*
>
> * * *
>
> *52. The main issue is as to the meaning of 'banking' used in Entry 45 of List I of the Seventh Schedule of the Constitution of India. It is necessary to understand the meaning of 'bank' and 'banking.' Before the Constitution was promulgated, banking was dealt with by the erstwhile Banking Companies Act, 1949. Upon its extension to co operative banks run by cooperative societies, it was renamed as the BR Act, 1949. Before we consider the definition of 'banking' under the BR Act, 1949, it is necessary to understand the meaning of 'bank' and 'banking.' The bank ordinarily means any establishment which carries the business of banking. The expression 'bank' has been defined in several enactments. In Concise Oxford English Dictionary, 'bank' has been defined thus:*
>
> > *"bank • n. 1 a financial establishment that uses money deposited by customers for investment, pays it out when required, makes loan at interest, and exchanges currency."*
>
> *In Concise Oxford English Dictionary, the word 'banking' has been defined thus:*
>
> > *"banking • n. the business conducted or services offered by a bank."*
>
> *53. In Black's Law Dictionary, Ninth Edition 'banking' means the business carried on by or with a bank. 'Bank' is defined thus:*
>
> > *"bank. (15c) 1. A financial establishment for the deposit,*

> *loan, exchange, or issue of money and for the transmission of funds; esp., a member of the Federal Reserve System. • Under securities law, a bank includes any financial institution, whether or not incorporated, doing business under federal or state law, if a substantial portion of the institution's business consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks and if the institution is supervised and examined by a state or federal banking authority; or a receiver, conservator, or other liquidating agent of any of the above institutions. 15USCA § 78c(a)(6). [Cases: Banks and Banking 2, 232, 289, 359.].*
>
> *2. The office in which such an establishment conducts transactions."*

54. Banks can be of different kinds such as Cooperative Bank, Collecting Bank, Commercial Bank, Correspondent Bank, Custodian Bank, Depository Bank, Drawee Bank, Federal Home Loan Bank, Federal Land Bank, Intermediary Bank, Investment Bank, Mutual Savings Bank, Nationalised Banks, Negotiable Bank, NonMember Bank, Payor Bank, Savings and Loan Bank, Saving Bank.

** * **

60. Learned counsel urged that performing core banking function is the sine qua non for being regulated by the BR Act, 1949. The BR Act, 1949 applies to a primary credit society which has been brought within its purview, leaving out primary agricultural credit society and a co-operative land mortgage bank. The business of banking cannot be carried out in India as per Section 22 of the BR Act, 1949 as applicable to the cooperative banks/societies, unless it is a primary credit society, and it is a cooperative bank and holds a licence issued by the Reserve Bank of India. It is not in dispute that all cooperative banks run by cooperative societies hold the licence, and all co operative banks are doing the business within the purview of the BR Act, 1949. We are unable to accept the submission that banking under Entry 45 of List I does not cover 'cooperative banks'. The activity of the cooperative bank is covered under Section 5(1)(b). A similar submission was not accepted in Rustom Cavasjee Cooper. No doubt about it that every commercial activity cannot be brought within the scope of 'banking' in Entry 45 of List I. 'Banking' itself has a wide meaning, and the activity of cooperative banks is definitely, beyond an iota of doubt, covered by List I Entry 45.

61. It was argued on behalf of appellants that banking's legal term 'nomen juris' is defined under Section 5(b) of the BR Act, 1949. When the Constitution was being drafted, the definition of 'banking' in the said Act prevailed. The makers of the Constitution adopted the same expression. Thus, intent bore the precise and definite meaning it had in law and, therefore, must be construed having regard to its known legal import. For this purpose, reference has been made to the observations *made by this Court in Gannon Dunkerley & Co., (Madras) Ltd., in which it was held: (AIR pp. 574-75, paras 36-37)*

"36. The principle of these decisions is that when, after the enactment of a legislation, new facts and situations arise which could not have been in its contemplation, the statutory provisions could properly be applied to them if the words thereof are in a broad sense capable of containing them. In that situation, "it is not," as observed by Lord Wright in James .v. Commonwealth of Australia, "that the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning". The question then would be not what the framers understood by those words, but whether those words are broad enough to include the new facts. Clearly, this principle has no application to the present case. Sales tax was not a subject which came into vogue after the Government of India Act, 1935. It was known to the framers of that statute and they made express provision for it under Entry 48. Then it becomes merely a question of interpreting the words, and on the principle, already stated, that words having known legal import should be construed in the sense which they had at the time of the enactment, the expression "sale of goods" must be construed in the sense which it has in the Sale of Goods Act.

37. A contention was also urged on behalf of the respondents that even assuming that the expression "sale of goods" in Entry 48 could be construed as having the wider sense sought to be given to it by the appellant and that the provisions of the Madras General Sales Tax Act imposing a tax on construction contracts could be sustained as within that entry in that sense, the impugned provisions would still be bad under S. 107 of the Government of India Act, and the decision in Dukhineswar Sarkar & Bros. v. CTO, was relied on in support of this contention. Section 107, so far as is material, runs as follows:

107. **Inconsistency between Federal laws and Provincial, or State laws.** -
(1) "If any provision of a Provincial law is repugnant to any provision of a Dominion law which the Dominion Legislature is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Dominion law, whether passed before or after the Provincial law, or, as the case may be, the existing law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.
(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Dominion law or an existing law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor General has received the assent of the Governor General, the Provincial law shall in that Province prevail, but nevertheless the Dominion Legislature may at any time enact further legislation with respect to the same matter."

Now, the argument is that the definition of "sale" given in the Madras General Sales Tax Act is in conflict with that given in the Sale of Goods Act, 1930, that the sale of goods is a matter falling within Entry 10 of the Concurrent List, and that, in consequence, as the Madras General Sales Tax (Amendment) Act, 1947, (Mad. 25 of 1947) under which the impugned provisions had been enacted, had not been reserved for the assent of the Governor General as provided in S. 107 (2). Its provisions are bad to the extent that they are repugnant to the definition of "sale" in the Sale of Goods Act, 1930. The short answer to this contention is that the Madras General Sales Tax Act is a law relating not to sale of goods but to tax on sale of goods, and that it is not one of the matters enumerated in the Concurrent List or over which the Dominion legislature is competent to enact a law, but is a matter within the exclusive competence of the Province under Entry 48 in List II. The only question that can arise with reference to such a law is whether it is within the purview of that Entry. If it is, no question of repugnancy under S. 107 can arise. The decision in Dukhineswar Sarkar & Bros. v. CTO, on this point cannot be accepted as sound."

* * *

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

Effect of Schedule VII List I Entries 43 and 45 and List II Entry 32 of the Constitution of India.

67. Schedule VII List I Entry 43 of the Constitution of India has been pressed into service on behalf of appellants. It confers upon the Parliament the competence to pass the law pertaining to 'incorporation, regulation and winding up' of the trading corporation, more particularly, a banking corporation. However, cooperative societies are expressly excluded from the purview of the Parliament's competence. No doubt about it that in Entry 43 of List I 'incorporation, regulation and winding up' of the cooperative societies have been kept out of the purview of the Union List by specifically excluding the cooperative societies, otherwise, they would have been included for 'incorporation, regulation and winding up' in Entry 43 of List I. The terms "incorporation, regulation and winding up of co operative societies" were reserved as State subjects under Entry 32 of List II, it was so omitted from List 43 of List I. But the exclusion from Entry 43 of List I *taking out 'incorporation, regulation and winding up' of cooperative societies out of the purview of the Parliament, does not advance the cause of the cooperative banks.*

** * **

87. It is apparent that 'incorporation, regulation and winding up' of the cooperative societies are covered under Entry 32 of List II of the Seventh Schedule of the Constitution of India, whereas 'banking' is covered by Entry 45 of List I. Thus, aspect of 'incorporation, regulation and winding up' would be covered under Entry 32 of List II. However, banking activity of such cooperative societies/banks shall be governed by Entry 45 of List I. The said banks are governed and regulated by legislation related to Entry 45 of List I, the BR Act, 1949 as well as the Reserve Bank of India Act under Entry 38 of List I. In the matter of licencing and doing business, a deep and pervasive control is carved out under the provisions of the BR Act, 1949 and banking activity done by any entity, primary credit societies, is a bank and is required to submit the accounts to the Reserve Bank of India, and there is complete control under the aforesaid Act. For activity of banking, these banks are governed by the legislation under Entry 45 of List I. Thus, recovery being an essential part of the banking, no conflict has been created by providing additional procedures under Section 13 of the SARFAESI Act. It is open to the bank to adopt a procedure which it may so choose. When banking in pith and substance is covered under Entry 45 of List I, even incidental trenching upon the field reserved for State under Entry 32 List II is permissible.

88.&89. ...

90. The legislation and entries are to be considered in pith and substance is the settled principles of law, and incidental trenching is permissible. Thus, we are of the opinion that section 2(c)(iv)(a) of the SARFAESI Act and the notification dated 28.2.2003 cannot be said to be ultra vires. They are within the ken of Schedule VII List I Entry 45 to the Constitution of India.

** * **

100. Learned Counsel for the appellants has also placed reliance on Virendra Pal Singh, in which the provisions relating to the recruitment, emoluments, terms, and conditions of service, including disciplinary control of employees working in the cooperative societies involved in the banking were considered. Thus, the question of management/regulation of the cooperative societies was involved. The aspect of the banking business of the cooperative banks was not involved. A question was raised as to the legislative competence of the State to enact. In that context, the Court held that, in pith and substance, the U.P. Cooperative Societies Act dealt with incorporation, management and winding up and that if it incidentally trenches upon banking, would not take the legislation beyond the competence of the State Legislature. For the proper financing and effective functioning of cooperative societies, there must also be co operative societies that do banking business to facilitate the working of other cooperative societies *merely because they do banking business, they do not cease to be co-operative societies. It was opined:(SCC p. 114, para 10)*

"10. We do not think it necessary to refer to the abundance of authority on the question as to how to determine whether a legislation falls under an entry in one list or another entry in another list. Long ago in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., the Privy Council was confronted with the question whether the Bengal Money Lenders Act fell within Schedule VII List II Entry 27 to the Government of India Act, 1935, which was "moneylending", in respect of which the provincial legislature was competent to legislate, or whether it fell within Entries 28 and 38 in List I which were "promissory notes" and "banking" which were within the competence of the Central Legislature. The argument was that the Bengal Money-Lenders Act was beyond the competence of the provincial legislature insofar as it dealt with promissory notes and the business of banking. The Privy Council upheld the vires of the whole of the Act because it dealt, in pith and substance, with money-lending. They observed: (SCC OnLine PC)

'Subjects must still overlap, and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with.'

Examining the provisions of the U.P. Cooperative Societies Act in the light of the observations of the Privy Council we do not have the slightest doubt that in pith and substance the Act deals with "cooperative societies". That it trenches upon banking incidentally does not take it beyond the competence of the State Legislature. It is obvious that for the proper financing and effective functioning of cooperative societies there must also be cooperative societies which do banking business to facilitate the working of other cooperative societies. Merely because they do banking business such cooperative societies do not cease to be cooperative societies, when otherwise they are registered under the Cooperative Societies Act and are subject to the duties, liabilities and control of the provisions of the Cooperative Societies Act. We do not think that the question deserves any more consideration and, we, therefore, hold that the U.P. Cooperative Societies Act was within the competence of the State Legislature. This was also the view taken in Nagpur District Central Coop. Bank Ltd. v. Registrar of Coop. Societies and Sadhu Singh v. State of Punjab,"
101. ...
102. The concept of regulating non-banking affairs of society and regulating the banking business of society are two different aspects and are covered under different Entries, i.e., List Ii Entry 32 and List I

Entry 45, respectively. The law dealing with regulation of banking is traceable to List I Entry 45 and only the Parliament is competent to legislate. The Parliament has enacted the SARFAESI Act. It does not intend to regulate the incorporation, regulation, or winding up of a corporation, company, or cooperative bank/cooperative society. It provides for recovery of dues to banks, including cooperative banks, which is an essential part of banking activity. The Act in no way trenches on the field reserved under List II Entry 32 and is a piece of legislation traceable to List I Entry 45. The decision in Virendra Pal Singh has been rendered regarding service regulations. It does not apply to the instant case concerning the regulation of "banking" covered under List I Entry 45. The Court did not deal with the aspect of the regulation of banking in the said decision as it was not required to be decided. Thus, the ratio of the decision operates in a different field. Moreover, the U.P. Cooperative Services Act was saved on the ground of incidental trenching on the subject of another List, i.e., Entry 45 List I, which is permissible.

* * *

112. It is apparent that in order to avoid verbatim reproduction of the earlier provisions, which did not apply to a cooperative bank, a device was carved out in Section 56(a) to read 'company' as 'banking company' or 'the company' or 'such company' as references to a co operative bank. If the definition in Section 5(c) and interpretation clause are not read as incorporated and having been amended, the interpretation clause and the entire amendment of Part V will become unworkable. It was not practical to amend the entire Act of 1949 as it dealt with 'incorporation, regulation and winding up' of other entities relatable to List I, as such the provisions were required to be retained, and such matters concerning cooperative societies/banks, relatable subject-matter under Schedule VII List I Entry 32 of the Constitution of India, were to be excluded. As various provisions were to be omitted in their application to the cooperative societies and other provisions were to apply in a modified form, the amendments were made in the provisions in their application to the cooperative banks by providing a separate Chapter. Thus, it was not considered necessary nor would have been appropriate to amend the definition of Section 5(c) where it existed, in fact it was so amended in Section 56(a). Entire Chapter V was enacted concerning the application of the Act to the cooperative banks and has to be given full effect. Merely because the procedure for recovery of dues is provided in the Cooperative Societies Act, could not have come in the way of interpretation of that expression 'cooperative bank' which was included in the definition and interpretation clause of Section 5 of the BR Act, 1949. It was open to the Parliament to deal with the subject of 'banking' in List I Entry 45 and this Court in Greater Bombay Coop. Bank Ltd. itself opined that the BR Act, 1949 applies to cooperative banks which is the enactment related to List I Entry 45 and third proviso to Article 243-ZL(1) of the Constitution of

India also provides that the BR Act shall also apply. Thus, the Parliament considered it appropriate to provide additional remedy for speedy recovery which is an alternative even if there is an incidental encroachment on the field reserved for the State under List II Entry 32, as in pith and substance, the 'banking' is part of List I Entry 45 and recovery procedure is covered within the ken of List I Entry 45. Thus, considering the Doctrine of Pith and Substance and incorporation by amendment made, we are of the considered opinion that cooperative banks are included in the definition of 'bank' and 'banking company' under Section 2(1)(c) and 2(1)(d) of the SARFAESI Act.

** * **

116.Regarding the definition of 'banking company' in the BR Act, 1949, it was observed: (Greater Bombay Coop. Bank Ltd. case, SCC pp. 265 & 268, paras 73 & 80-81):

"73. The RDB Act was passed in 1993 when Parliament had before it the provisions of the BR Act as amended by Act 23 of 1965 by addition of some more clauses in Section 56 of the Act. Parliament was fully aware that the provisions of the BR Act apply to cooperative societies as they apply to banking companies. Parliament was also aware that the definition of "banking company" in Section 5(c) had not been altered by Act 23 of 1965 and it was kept intact, and in fact additional definitions were added by Section 56(c). "Cooperative bank" was separately defined by the newly inserted clause (cci) and "primary cooperative bank" was similarly separately defined by clause (ccv). Parliament was simply assigning a meaning to words; it was not incorporating or even referring to the substantive provisions of the BR Act. The meaning of "banking company" must, therefore, necessarily be strictly confined to the words used in Section 5(c) of the BR Act. It would have been the easiest thing for Parliament to say that "banking company" shall mean "banking company" as defined in Section 5(c) and shall include "cooperative bank" as defined in Section 5 (cci) and "primary cooperative bank" as defined in Section 5(ccv). However, Parliament did not do so. There was thus a conscious exclusion and deliberate omission of cooperative banks from the purview of the RDB Act. The reason for excluding cooperative banks seems to be that cooperative banks have comprehensive, self contained and less expensive remedies available to them under the State Cooperative Societies Acts of the States concerned, while other banks and financial institutions did not have such speedy remedies and they had to file suits in civil courts.

80. As already pointed out, the RDB Act is consistent with the general banks and their creditors/loanees while the MCS Act, 1960, the APCS Act, 1964 and the MSCS Act, 2002 are concerned with the regulation of societies only. The language of the sections in these enactments defining "banking company" is plain, clear and explicit. It does not admit any doubtful interpretation as the intention of the legislature is clear as aforesaid. It is well settled that the language of the statutes is to *be properly understood. The usual presumption is that the legislature does not waste its words and it does not commit a mistake. It is presumed to know the law, judicial decisions and general principles of law. The elementary rule of interpretation of the statute is that the words used in the section must be given their plain grammatical meaning. Therefore, we cannot afford to add any words to read something into the section, which the legislature had not intended.*

81. Finally, it could not be said that amendments in Chapter V, Section 56 of the BR Act by Act 23 of 1965 inserting "cooperative bank" in clause (cci) and "primary cooperative bank" in clause (ccv) either expressly or by necessary intendment (sic make the RDB Act) apply to the cooperative banks transacting business of banking."

* * *

142. Resultantly, we answer the reference as under:

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

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

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

142.3. (3)(a) The cooperative banks under the State legislation and multiState cooperative banks are 'banks' under section 2(1)(c) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The recovery is an essential part of banking; as such, the recovery procedure prescribed under section 13 of the SARFAESI Act, a legislation relatable to Schedule VII List I Entry 45 to the Constitution of India, is applicable.

142.4. (3)(b) The Parliament has legislative competence under Schedule VII List I Entry 45 of the Constitution of India to provide additional procedures for recovery under section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with respect to co operative banks. The provisions of Section 2(1)(c)(iv-a), of Securitisation and Reconstruction

> *of Financial Assets and Enforcement of Security Interest Act, 2002, adding "ex abundanti cautela", 'a multi-State cooperative bank' is not ultra vires as well as the notification dated 28.1.2003 issued with respect to the co operative banks registered under the State legislation.* The civil appeals, writ petitions and the pending applications, if any, are disposed of accordingly. No costs."

29. The above referred observations made it clear that, banking in pith and substance is covered under Entry 45 of List I, even incidental trenching upon the field reserved for State under Entry 32 List II is permissible. It is further evident that, the meaning of "banking company" necessarily be strictly confined to the words used in Section 5(c) of the BR Act.

30. The above referred observation also makes it clear that, it would have been the easiest thing for Parliament to say that "banking company" shall mean "banking company" as defined in Section 5(c) and shall include "cooperative bank" as defined in Section 5 (cci) and "primary cooperative bank" as defined in Section 5(ccv). However, Parliament did not do so. There was thus a conscious exclusion and deliberate omission of cooperative banks from the purview of the RDB Act. The reason for excluding cooperative banks seems to be that cooperative banks have comprehensive, self contained and less expensive

remedies available to them under the State Cooperative Societies Acts of the States concerned, while other banks and financial institutions did not have such speedy remedies and they had to file suits in civil courts.

31. Thus, I do not find any merit in the present writ petitions, saying that, Section 18 of the Recovery of Debts and Bankruptcy Act, 1993 operates as a complete bar to file application under Section 101 of the Maharashtra Cooperative Societies Act, 1960. Accordingly, the writ petitions are **dismissed.**

Rule stands discharged. No order as to costs.

(ANIL S. KILOR, J)

At this stage, the learned counsel for the petitioners prays for continuation of the stay granted by this Court vide orders dated 04/10/2021 and 02/05/2022.

Since the stay is operating from 04/10/2021 and 02/05/2022, I am of the opinion that no prejudice will be caused to other side if the stay is continued for six weeks more.

Accordingly, the stay granted by this Court shall continue to operate for another six weeks and it will automatically vacate on expiry of the said period.

(ANIL S. KILOR, J)

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