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

Writ Petition No.99 of 2021

Wardha Nagari Sahakari Adhikosh (Bank) Maryadit, Wardha
vs.
State of Maharashtra, Ministry of Co-operation, Mantralaya, Mumbai and others

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Mr. V.S. Giramkar, Advocate for the Petitioner.
Mrs. Mrunal Naik, A.G.P. for Respondent Nos.1 and 2.
Mr. R.K. Deshpande, Advocate for Respondent Nos.3 and 4.
Mr. Akhilesh Potnis h/f Mr. A.M. Sudame, Advocate for Respondent No.7.

CORAM : ROHIT W. JOSHI, J.
DATE : 30th SEPTEMBER, 2025.

Heard the learned Advocate for the respective parties.

02. The petitioner is a Co-operative Bank duly registered under the Maharashtra Co-operative Societies Act, 1960 *(hereinafter referred to as "MCS Act" for brevity)*. The petitioner had initiated a proceeding under Section 101 of the MCA Act for recovery of dues against respondent Nos.3 to 7.

03. The respondents raised a contention at the time of the hearing of the application that since the petitioner-bank has taken recourse to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 *(hereinafter referred to as 'SARFAESI Act' for brevity)*, it was not open to the petitioner to take recourse to Section 101 of the MCS Act for recovery of its dues.

04. Section 37 of the SARFAESI Act provides that the provisions the said Act or the rules framed thereunder shall be in addition to, and not in derogation of, any other law for the time being in force.

Likewise, Section 35 provides that the provisions of the SARFAESI Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

05. A perusal of provisions of both the enactments will clearly indicate that simultaneous proceedings under Section 101 of the MCS Act are not barred. There is no express provision barring such proceedings. It must be stated that under the provisions of the SARFAESI Act, the bank is entitled to take recourse only against the secured assets i.e. properties which are offered as security to secure the loan. However, under the provisions of the MCS Act, an order of determination of liability is required to be passed and thereafter certificate, if any, issued against the borrower can be executed by following the prescribed procedure. Under the provisions of MCS Act, properties of borrowers/guarantors other than the properties, which are secured by way of mortgage, charge etc, can also be proceeded against in order to realize the dues.

06. The learned Advocate for the respondents has placed reliance on judgment of the Hon'ble Supreme Court in the case of ***Pandurang Ganpati Chaugule vs. Vishwasrao Patil Murgud Sahakari Bank Ltd. - (2020) 9 SCC 215*** to contend that in view of Schedule VII List I Entry 45 of the Constitution of India, the State legislature will not have legislative competence to frame any laws with respect to essential and core banking business. He contends that the Hon'ble Supreme Court has held that recovery of loan is a part of core banking business which is squarely covered by List I Entry 45 and, therefore, the provisions of the MCS Act cannot be invoked for recovery of loan even by a cooperative bank. He contends that a cooperative bank is also a banking company within the meaning of Section 2(d) of the SARFAESI Act read with Section 5(c) of the Banking Regulation Act, 1949.

07. The issue in the matter of *Pandurang Chaugule* was as to whether provisions of the SARFAESI Act can be invoked by a cooperative bank to recover it's dues. The authority of cooperative banks to invoke provisions of the MCS Act for recovery of loan was not subject matter of the said judgment. It must also be stated that the judgment lays down that the provisions of the SARFAESI Act can be invoked by a cooperative bank. However, it does not lay down a ratio that the provisions of the MCS Act cannot be invoked by a cooperative bank.

08. It will be pertinent to mention that the said judgment of *Pandurang Chaugule* is considered by the learned Single Judge of this Court in Writ Petition No.691 of 2022 *(Viren Foods and Beverages Pvt. Ltd. and others Vs. State of Maharashtra and others)* decided on 11/04/2022. Considering the aforesaid judgment of the Hon'ble Supreme Court, this Court has rejected the challenge that the provisions of the MCS Act cannot be invoked by a cooperative bank after enactment of the SARFAESI Act. The said judgment also deals with Section 101 of the MCS Act. In view of categorical pronouncement of this Court in the matter of *Viren Foods* (supra) the contention raised by the petitioner as regards maintainability of proceeding under Section 101 of the MCS Act is liable to be rejected.

09. The petitioner also places reliance on a judgment dated 20/03/2025 passed by the learned Single Judge of this Court at Aurangabad Bench in Writ Petition No.2746/2023 *(Aryan Multi Trade LLP, Samsherpur vs. Sunitabai Patil and another)* and other connected matters. Drawing attention to paragraphs 16 and 17 of the said judgment, it is contended that in view of Section 35 of the SARFAESI Act, resort to provisions of the MCS Act cannot be taken by a cooperative bank for recovery of its dues. Reliance on the said

judgment is completely misplaced. The facts of the said case will indicate that the cooperative bank had, by invoking provisions of SARFAESI Act, sold certain secured assets. In the meanwhile, a third person had instituted a proceeding for recovery against the borrower-company under Section 91 of the MCS Act. The proceeding filed under Section 91 of the MCS Act was allowed. In the execution proceedings, the property purchased by the auction purchaser under the SARFAESI Act was sought to be proceeded against. In this backdrop, an objection was raised that once secured assets were sold by taking recourse was taken to provisions of the SARFAESI Act, the provisions of the MCS Act could not have been invoked for execution of an award/decree passed in favour of another person by the learned Cooperative Court under Section 91 of the MCS Act. The judgment states that once the property was sold by the secured creditor, invoking provisions of the SARFAESI Act, the said property could not be proceeded against in execution of award/decree passed under the MCS Act. The said case does not deal with right of a cooperative bank to invoke Section 101 of the MCS Act simultaneously or after having invoked Section 13 of the SARFAESI Act. With respect to the ratio of the said judgment, it will not be applicable to the facts of the present case.

10. The judgment in the matter of ***Asha Oil Foods Pvt. Ltd. Vs. The Jalgaon Janta Sahakari Bank Ltd. & others- 2005 (2) ALL MR 721*** is also not applicable. In the said case the contention was raised that a cooperative bank cannot take recourse to Section 13 of the SARFAESI Act in order to recover its dues. The said contention was rejected by this Court. While holding so, an observation is made that the provisions of the SARFAESI Act have overriding effect on provisions of all other laws including the MCS Act. However, the ratio of the said judgment is not that provisions of the MCS Act cannot be invoked

simultaneously with the provisions of SARFAESI Act.

11. Likewise, the judgment in the matter of ***Marathwada Gramin Bank, Bhoker Branch, through its Branch Manager vs. The Maharashtra State Cooperative Bank Ltd. & others - 2007 Vol.109(1) Bom.L.R.0141*** and other connected matters, also does not assist the case of the respondents. In the said case, action under Section 13 of the SARFAESI Act was taken against a sugar factory, referred as Karkhana in the judgment. An order of appointment of liquidator was passed against the Karkhana under Section 105 of the MCS Act. In this backdrop, a challenge was raised to the action taken under Section 13(4) of the SARFAESI Act. The said challan was rejected in view of Section 35 of the SARFAESI Act, which states that the provisions of the said Act shall have overriding effect over all other enactments. Reference is also made to Article 246(1) of the Constitution of India to hold that the Central Act would override a State Act in case of inconsistency between the two Acts. The said judgment cannot be relied upon to contend that simultaneous proceedings under SARFAESI Act and the MCS Act cannot be initiated.

12. In that view of the matter, the impugned order dated 26/05/2020 passed by the learned Assistant Registrar, Co-operative Societies, Wardha in Case No.1707/2019 is quashed and set aside. The matter is remitted back to the learned Assistant Registrar, Cooperative Societies, Wardha to decide the application on merits in accordance with law.

13. The parties are directed to appear before the said authority on 27th October, 2025. The parties to note that separate notice for appearance will not be issued.

JUDGE

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