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

WRIT PETITION NO.3783 OF 2021

PETITIONER :- The Washim Urban Co-Operative Bank Ltd. Through its Branch Manager, Having branch at Kediya Plot, Akola, Tq. & Dist. Akola

..**VERSUS**..

RESPONDENTS :-

1) Girishchandra S/o. Rambilas Kothari Aged about 58 years, Occ. Business,

2) Umeshchandra S/o. Rambilas Kothari Aged about 65 years, Occ. Business,

3) Jayprakash Rambilas Kothari Aged about 63 years, Occ. Business,

All No. 1 to 3 R/o. Near Bhagwat Hospital, Gorakshan Road, Akola, Dist. Akola.

4) Kishore S/o. Mohanlal Kothari Aged about 71 years, Occ. Business R/o. Vidya Nagar, Akola.

5) Dipak S/o. Hiralal Agrawal Adult, Occ. Business, R/o. Rajputpura, Akola Dist. Akola.

Amendment as per Courts order dasted 8.7.2022

5) Shri DeepakS/o Hiralal Agarwal C/o Chemist Shopping Complex Dawa Bazar, Near Hotel Skylark Akola

WITH

WRIT PETITION NO.3788 OF 2021

PETITIONER :- The Washim Urban Co-Operative Bank Ltd. Through its Branch Manager, Having branch at Old Cloth Market, Akola, Tq. & Dist. Akola

..**VERSUS**..

RESPONDENTS :- 1) Umeshchandra S/o. Rambilas Kothari Aged about 65 years, Occ. Business,

2) Jayprakash S/o Rambilas Kothari Aged about 62 years, Occ. Business,

Both No. 1 to 2 R/o. Dawa Bazar, Near Skylark, Akola, Tq. & Dist. Akola.

3) Girish S/o. Rambilas Kothari Aged about 57 years, Occ. Business, R/o. Near Bhagwat Hospital, Gorakshan Road, Akola, Dist. Akola.

4) Shashimohan S/o. Suganchand Tapadiya, Aged about 72 years, Occ. Business, R/o. Tapadiya Press, Akola

WITH

WRIT PETITION NO.3785 OF 2021

PETITIONER :- The Washim Urban Co-Operative Bank Ltd. Through its Branch Manager, Having branch at Kediya Plot, Akola, Dist. Akola through its Manager

..**VERSUS**..

RESPONDENTS :- 1) Jaiprakash Rambilas Kothari
Aged about 63 years, Occ. Business,

2) Umeshchandra S/o. Rambilas Kothari
Aged about 65 years, Occ. Business,

3) Girish S/o. Rambilas Kothari
Aged about 58 years, Occ. Business,
All No. 1 to 3 R/o. Near Vatsal Hospital, Gorakshan Road, Akola, Dist. Akola.

4) Kishore S/o. Mohanlal Kothari, Aged about 71 years, Occ. Business,
R/o. Vidya Nagar, Akola.

5) Sau. Padmaa Jaiprakash Kothari,
Aged about adult, Occ. Housewife,

6) Sau. Madhuri Sadip Kothari,
Aged about adult, Occ. Housewife,
5 & 6 R/o Goraksha Road, Akola.
Tq. Dist. Akola

Mr. P. K. Mohta, Advocate for Petitioner.
Mr. M. G. Sarda, Advocate for the Respondents.

CORAM : **ROHIT W. JOSHI, J.**
DATE OF RESERVE : **06.10.2025**
DATE OF PRONOUNCEMENT : **03.11.2025**

JUDGMENT :

1) The present petitions involve identical question of law relating to the jurisdiction of the Co-operative Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as 'the MCS Act, 1960', for brevity) to entertain proceedings for recovery of loan advanced by a Cooperative Bank.

2) The petitioner in all three petitions is The Washim Urban Co-Operative Bank Ltd., which is a registered cooperative society under the MCS Act, 1960. The petitioner had filed three separate proceedings under Section 91 of the MCS Act, 1960 against the respondents in the respective petitions for recovery of loan advanced. In all these cases, the respondents raised an issue with respect to jurisdiction of the learned Co-operative Court to entertain the proceedings in view of Section 18 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as 'the RDB Act, 1993'). The learned Co-operative Court rejected the objection pertaining to jurisdiction and decided the claim on merits. The learned Co-operative Court allowed the disputes filed by the petitioner bank by passing three different judgments. The respondents filed appeals before the Co-operative Appellate Court under Section 97 of the MCS Act, 1960.

3) The learned Co-operative Appellate Court has held that since the claims in all three matters were more than Rs.10,00,000/- and Debts Recovery Tribunal was already constituted for all eleven districts of Vidarbha in the year 2000, the jurisdiction of the Co-operative Court to entertain the disputes under Section 91 of the MCS Act, 1960 was barred in view of Section 18 of the RDB Act, 1993. The petitioner has filed the present petitions challenging the said appellate judgments and orders dismissing the disputes filed by it on the issue of jurisdiction.

4) It is not in dispute that the petitioner is a cooperative society registered under the MCS Act, 1960. It is also not in dispute that the amount for which the disputes under Section 91 were filed by the petitioner were more than Rs. 10,00,000/-. These disputes are filed in the years 2005 and 2006. It is not in dispute that the Debts Recovery Tribunal, Nagpur, was constituted with territorial jurisdiction extending over all the eleven districts of Vidarbha region in the year 2000 and that, the date on which the respective disputes were filed, the Debts Recovery Tribunal was in existence.

5) The only point that arises for consideration in the present petitions is in relation to jurisdiction of Co-operative Court under Section 91 of the MCS, Act in view of Section 18 of the RDB Act. The learned Co-operative Court decided the issue of jurisdiction in the light of judgment of the Hon'ble Supreme Court in the matter of ***Greater Bombay Co-op. Bank Ltd. v. United Yarn Tex. Pvt. Ltd. and others,*** reported in ***(2007) 6 SCC 236,*** wherein it was held that a Co-operative Bank which is also a co-operative society registered under the MCS Act, 1960 does not fall within the meaning of the term, 'banking company' as defined under Section 5(c) of the Banking Regulation Act, 1949, and therefore, it is not a bank within the meaning of Section 2(d) of the RDB Act, 1993. It was accordingly held that the provisions of RDB Act, 1993 were not applicable, and consequently, the jurisdiction of the Co-operative Court under Section 91 was not ousted by Section 18 of the RDB Act.

6) The learned Co-operative Court had decided the disputes while the judgment of the Hon'ble Supreme Court in the matter of Greater Bombay Co-operative Bank (supra) was holding the field. The said judgment is since then overruled by the Hon'ble Supreme Court in the matter of ***Pandurang Ganpati Chaugule..Vs...Vishwasrao Patil Murgud Sahakari Bank Ltd,*** reported in ***(2020) 9 SCC 215.*** The Hon'ble Supreme Court has held that Co-operative Banks are included within the definition of the term 'bank' and 'banking company' as defined under Sections 2(1)(c) and 2(1)(d) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. Definitions of the terms 'bank' and 'banking company' are identically worded in both the Acts.

7) The learned Co-operative Appellate Court has allowed the appeals filed by the respondents/borrowers in all three petitions, holding that the petitioner bank is a 'bank' and a 'banking company' within the meaning of Sections 2(d) and 2(e) of the RDB Act, 1993. The said conclusion is drawn by placing reliance on the judgment of the Hon'ble Supreme Court in the matter of Pandurang Ganpati Chaugule (supra).

8) In the light of the aforesaid, the learned Co-operative Appellate Court has held that the learned Co-operative Court did not have jurisdiction to entertain the dispute under Section 91 of the MCS Act, in view of the express bar under Section 18 of the RDB Act.

9) Mr. Palash Mohta, the learned Advocate for the petitioner, contends that the provisions of RDB Act, particularly Sections 17, 18 and 19 thereof will not have the effect of ousting jurisdiction of the learned Co-operative Court under Section 91 of the MCS Act. He contends that jurisdiction under Section 91 will continue to exist despite the bar under Section 18 of the RDB Act. The learned Advocate has placed reliance on the judgments of the Hon'ble Supreme Court in the matter of ***Nationals Spot Exchange Ltd., Vs Union of India,*** reported in ***(2025) 8 SCC 393,*** **judgment dated 09.02.2024** by this Court at its Nagpur Bench in Writ Petition Nos.2188 of 2022 and other connected matters **(*Supreme Agro Trade and others...Vs...State of Maharashtra)*** and judgment **dated 11.04.2022** by this Court at its Nagpur Bench in **Writ Petition No.691 of 2022** ***(Viren***

Foods and Beverages Pvt. Ltd. and ors. Vs. State of Maharashtra).

10) Per contra, Mr. M.G. Sarda, learned Advocate for the respondents/borrowers, contends that jurisdiction of Cooperative Court is expressly barred by Section 18 of the RDB Act. He contends that, undisputedly, the claim of the petitioner is more than Rs.10,00,000/- and on the date of filing of the disputes, the Debts Recovery Tribunal was already established. He contends that, in view of the judgment of the Hon'ble Supreme Court in the matter of Pandurang Ganpati Chaugule (supra), it cannot be disputed that the Debts Recovery Tribunal will have jurisdiction to entertain proceedings for recovery of money filed by the petitioner and, therefore, the jurisdiction of all Courts and authorities, including the Co-operative Court, will be barred in view of Section 18 of the RDB, Act.

11) Mr. Mohta, counters the contention and argues that the remedy under Section 18 of the RDB Act can only be considered to be an additional remedy, in addition to the remedies provided under the MCS Act, and that the said provision cannot be interpreted to mean that the jurisdiction of authorities constituted under the MCS Act is ousted.

12) At the outset, it must be stated that, in view of the categorical pronouncement of the Hon'ble Supreme Court in the matter of Pandurang Ganpati Chaugule (supra), there cannot be any doubt that a co-operative bank falls within the definition of the terms 'banking company' and 'bank' as defined under Sections 2(e) and 2(d) respectively of the RDB Act,1993. In this backdrop, when Section 17 of the RDB Act, 1993 is perused, it will be apparent that the DRT shall have the jurisdiction, power and authority to decide applications filed by co-operative banks for recovery of debt due to it. In this context, it is necessary to refer to Section 18 of the RDB Act, which provides an express bar to jurisdiction of every Court and other authority to exercise any jurisdiction, power or authority in relation to any matters provided under Section 17 of the RDB Act, 1993. The bar is not only to jurisdiction of Civil Court but also to jurisdiction of, 'any authority'. Even if, the Co-operative Court constituted under MCS Act, 1960 is not considered to be a Court, it will certainly be, an authority, referred under Section 18 of the RDB Act, 1993. It is therefore, obvious that Section 18 of the RDB Act, 1993 will have the effect of ousting the jurisdiction of the learned Co-operative Court to deal with proceeding for recovery of debt initiated by the petitioner under Section 91 of the MCS Act, 1960.

13) Mr. Mohta, learned Advocate for the petitioner contends that having regard to the doctrine of pith and substance, the Co-operative Court will also have the jurisdiction to entertain the dispute and bar under Section 18 of the RDB, Act will not apply. The doctrine of pith and substance means that if an enactment substantially falls within the powers expressly conferred by the Constitution on the legislature, and the legislature enacts a law in exercise of such power, then the law so enacted cannot be held to be invalid for want of legislative competence merely because it incidentally encroaches on matters assigned to another legislature. The said doctrine is invoked in cases where a virus of an Act is challenged for want of legislative competence. In the case at hand, the validity of the MCS Act is not in question. The question is of interpretation of two statutes. The question will have to be answered having regard to the provisions of Section 91 of the MCS Act and Sections 17 and 18 of the RDB Act. Section 91 of the MCS, Act confers jurisdiction upon Co-operative Court to decide disputes touching, amongst other aspects, business of a co-operative society relating to dispute between category of persons enumerated therein which includes a society and its members. The dispute in the matter is pertaining to recovery of amount advanced by the petitioner to the respondents/borrowers who were/are members of the petitioner-society. The Co-operative Court, therefore, will have the jurisdiction to entertain claim for recovery of money under Section 91 of the MCS, Act. However, Section 91 of the MCS, Act has to be read in conjunction with Sections 17 and 18 of the RBD, Act. Section 17 of the RDB Act confers jurisdiction on the Debts Recovery Tribunal to decide applications by banks for recovery of debts due to it. The term debt is defined under Section 2(g) of the RDB, Act as an amount, which is claimed as due by any bank from any person, which is advanced by a bank during the course of its business activity. It will be pertinent to mention here that in view of Section 1(4) of the RDB, Act, provisions of the said Act are not applicable in case where the debt due is less than Rs.10,00,000/-. It is not in dispute that the debt due, as claimed by the bank in all the three cases is more than Rs.10,00,000/-. As is held in the matter of Pandurang Ganpati Chaugule petitioner is a bank under the RDB Act and consequently the Debts Recovery Tribunal will have jurisdiction to entertain application for recovery of debt by the petitioner under Section 17 of the RDB Act. The jurisdiction of Courts and other authorities to deal with any matter specified under Section 17 of the RDB Act is expressly barred by Section 18 of the said Act. Section 91 and Sections 17 and 18 when read in conjunction with each other will lead to conclusion that the jurisdiction of co-operative Court under Section 91 of the MCS, Act will be ousted in cases where the debt due claimed by a Co-operative Bank is more than Rs.10,00,000/-.

14) In the present case, the debt due is admittedly more than Rs.10,00,000/- and consequently, the jurisdiction of the learned Co-operative Court is clearly ousted by Section 18 of the RDB Act.

15) The argument pertaining to doctrine of pith and substance only implies that the State Legislature has the legislative competence to frame laws with respect to co-operative society, including a co-operative bank, and to provide mechanism for recovery of debt due to the co-operative bank. However, it cannot be disputed that such provisions framed by the State Legislature will have to be read in conjunction with central legislation, i.e. the RDB Act, 1993, which is also a validly enacted law framed by the Parliament. It will be pertinent to mention here that Section 34(1) of the RDB, Act provides overriding effect to the said Act over any other law in force. Sections 17 and 18 of the RDB, Act when read harmoniously with Section 91 of the MCS Act, 1960, will lead to the conclusion that in cases where the amount of debt due as claimed by a co-operative bank is less than Rs.10,00,000/- or such limit as may be fixed by the Central Government in exercise of power under Section 1(4) of the RDB, Act, the Co-operative Court will have jurisdiction to entertain dispute for recovery of debt under Section 91 of the MCS, Act, however, if the debt due is claimed by the co-operative bank is more than Rs.10,00,000/- or the limit fixed by the Central Government, the jurisdiction of Co-operative Court under Section 91 of the MCS, Act shall stand ousted and the Debts Recovery Tribunal alone will have the jurisdiction to entertain application for recovery of debt in view of Section 17 read with Section 18 of the RDB, Act.

16) The learned Advocate for the petitioner has placed reliance on the judgment of this Court in the matter of Viren Foods and Beverages Pvt. Ltd. and ors., the said decision deals with the Section 101 of the MCS, Act and Section 13 of the SARFAESI Act. In the said case, the petitioner had raised a contention that parallel proceedings under Section 13 of the SARFAESI Act and Section 101 of the MCS Act cannot be initiated. The said contention was rejected by this Court placing reliance on the following observation in the matter of Pandurang Ganpati Chaugule (supra):-

> *“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.”*

17) It will be pertinent to mention that, although Section 35 of the SARFAESI Act, provides overriding effect to the provisions of said Act over other laws, Section 37 of the said Act does not bar operation of other laws. It will be pertinent to mention here that there is no provision under SARFAESI Act, which prohibits invocation of other remedies for recovery of debt. However, section 18 of the RDB Act specifically bars jurisdiction of other Courts and authorities to deal with any matter, which the DRT is competent to decide under Section 17. The judgment of this Court in the matter of Viren Foods(supra), which deals with provisions of SARFAESI Act will, therefore, not be applicable in the present case, since it does not deal with the provisions of RDB Act which specifically bar jurisdiction of other Courts and authorities.

18) The judgment in the matter of ***Supreme Agro Trade*** (supra) deals with Section 101 of the MCS Act and Sections 17 and 18 of the RBD Act. The said judgment holds that the proceedings under Section 101 will be maintainable at the behest of a cooperative society registered under the MCS Act on the ground that the Parliament had made a conscious exclusion and deliberate omission of cooperative banks from the purview of the RBD Act. The relevant observations in paragraphs 29 and 30 of the judgment are reproduced herein below:

> *"**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.*
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> ***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."

19) With respect, the observations run counter to the law laid down by the Hon'ble Supreme Court in the case of *Pandurang Chaugule* (supra). The relevant observations of the Hon'ble Supreme Court in *Pandurang Chaugule's* case are reproduced herein below for ready reference:

> *"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."

20) Thus, the Hon'ble Supreme Court has categorically held that the business of banking includes recovery procedure, which is an essential part of banking business. It is further held that business of banking of a cooperative bank is governed by Schedule VII List I Entry 45 of the Constitution of India. Although, the judgment in the matter of *Pandurang Chaugule* (supra) relates to SARFAESI Act, the definition of the terms "bank" and "banking company" under the SARFAESI Act and the RBD Act are identical and as such, the law laid down in the said judgment will apply with equal force to the cases under the RBD Act as well. In view of the law laid down by the Hon'ble Supreme Court, a cooperative bank is also a bank within the meaning of the RBD Act and, therefore, the Debt Recovery Tribunal will have jurisdiction to entertain the claim by a cooperative bank for recovery of loan in excess of Rs.10.00 lakhs and further jurisdiction of the Cooperative Court to entertain dispute under Section 91 of the MCS Act for recovery of loan in excess of Rs.10.00 lakhs will be barred in view of Section 18 of the said Act.

21) In view of the reasons aforesaid, in the considered opinion of this Court, the learned Co-operative Appellate Court has rightly held that jurisdiction of the Co-operative Court to entertain the dispute was barred in view of Sections 17 and 18 of the RDB Act and has rightly set aside the judgment and award passed by the learned Co-operative Court on the ground of jurisdiction. The Writ Petitions are, therefore, dismissed, with no order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay...