SUPREME COURT OF INDIA

Greater Bombay Co-op. Bank Ltd

Vs.

United Yarn Tex. Pvt. Ltd.

C.A.No.432 of 2004

(B. N. Agrawal, P. P. Naolekar and Lokeshwar Singh Panta JJ.)

04.04.2007

JUDGMENT:

LOKESHWAR SINGH PANTA, J.

Civil Appeal No.6069/2005, Civil Appeal No.6077/2005 and SLP (Crl.) No.2071/2006 are taken on board. A Bench of two judges before which this batch of twelve civil appeals and five special leave petitions came up for consideration was of the view that looking to the issues involved and the far-reaching consequences which such a decision will leave, these matters require consideration by a larger Bench. This is what the Bench observed in the order dated 1st December, 2005.

"This batch of appeals/SLPs involved animportant issue regarding right of recovery of debts by the co-operative banks constituted under the Co-operative Societies Acts of the States of Maharashtra and Andhra Pradesh. The issue has arisen in the context of enactment of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Under the Co- operative Societies Acts, there is a mechanism for recovery of debts by the Banks constituted under those Acts, which are also called Co-operative Banks. After the enactment of the 1993 Act, question arose as to whether such Co-operative Banks would have right of recovery under the respective Co-operatives Societies Acts or they will have to proceed under the 1993 Act. These aspects and some other issues, including the issue of legislative competence of the States to enact the provisions relating to Co-operative Banks, came up for consideration before the Bombay High Court and the High Court of Andhra Pradesh at Hyderabad. Both the High Courts have pronounced judgments on the issues and these judgments are under appeal in these cases. Looking to the issues involved and the far- reaching consequences which such a decision will leave, we are of the view that these matters be decided by a larger Bench.

This has also been brought to our notice that as a consequence of the impugned judgments of the two High Courts, recoveries worth thousands of crores of rupees are held up and for that reason these matters need to be decided as early as possible.

Let these matters be placed before Hon'ble the Chief Justice of India for constitution of an appropriate larger Bench for early disposal of these cases.

We are informed that so far as the batch of appeals/SLPs arising from the judgment of the Bombay

High Court is concerned, the stay applications have already been disposed of. The stay applications in the appeals/SLPs arising from the judgment of the Andhra Pradesh High Court are yet to be finally disposed of. Let the stay applications in the matters arising from the judgment of the Andhra Pradesh High Court be placed before this Court on Wednesday the 7th December, 2005. If any party is desirous of filing any reply, the same be filed by Monday the 5th December, 2005.

SLP (C) Nos. ...CC 9992-9993/2005, SLP (C) Nos.21685-21701/2005 and SLP(C) No. 22621/ 2005

Delay condoned.

Issue notice.

Dasti service, in addition to usual mode of service, is also permitted."

Hon'ble the Chief Justice of India, accordingly, has assigned these matters for hearing by a Bench of three Judges dealing with the subject matters of applicability of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 [for short "'the RDB Act'"] to the co-operative banks established under the Maharashtra Co-operative Societies Act, 1960 [for short "the MCS Act, 1960"]; The Multi-State Co- operative Societies Act, 2002 [for short "'the MSCS Act, 2002'"]; and the Andhra Pradesh Co-operative Societies Act, 1964 [for short "the APCS Act, 1964"].

The background of facts, which led to the filing of these cases, are noted from Civil Appeal No. 432 of 2004 titled The Greater Bombay Co-operative Bank Limited v. M/s United Yarn Tex Private Limited and Others filed against the judgments and orders of the Full Bench of the High Court of Judicature at Bombay and Civil Appeal No. 36 of 2006 titled A.P. State Co-operative Bank v. Samudra Shrimp Ltd. & Ors. decided by the Full Bench of the High Court of Judicature of Andhra Pradesh at Hyderabad.

A batch of writ petitions had been placed before Full Bench of the High Court of Judicature at Bombay in which the principal question of law that arose for consideration was: "Do the courts and authorities constituted under the Maharashtra Co-operative Societies Act, 1960 (the 1960 Act) and the Multi-State Co-operative Societies Act, 2002 (the 2002 Act) continue to have jurisdiction to entertain applications/ disputes submitted before them by the Cooperative Banks incorporated under the 1960 Act and the 2002 Act for an order for recovery of debts due to them, after establishment of a Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the 1993 Act)?"

The appellant-bank advanced amounts by way of term loans to the respondent-Company, which is a member of the appellant-society. The appellant-bank filed recovery application against the respondent-Company under Section 101 of the MCS Act, 1960 before the Registrar (Co-operative Societies) for recovery of its dues. The Assistant Registrar issued recovery certificate on 03.12.2002 in favour of the appellant-bank. Pursuant to the issuance of recovery certificate, a demand notice was issued to the respondent- Company by the Special Recovery and Sales Officer calling upon the respondent-Company to pay the dues of the appellant-bank, failing which the Authority would visit the premises of the respondent-Company on 1st February, 2003 for effecting recovery by way of attachment and sale of property specified in the Schedule attached thereto.

In January 2003, the respondent-Company filed a Writ Petition No. 727/2003 before the High Court

of Bombay impugning the recovery certificate dated 3rd December, 2002. Learned Single Judge of the High Court vide order dated 31st January, 2003 passed an ad-interim ex parte order restraining the Special Recovery and Sales Officer, in any manner, from proceeding with or in pursuant to recovery certificate dated 3rd December, 2002. It appears from the order of the High Court that the Division Bench of the High Court in The Shamrao Vithal Co-operative Bank Limited v. M/s Star Glass Works & Ors. [2003] 1 MLJ 1] held that the Debts Recovery Tribunal constituted under the RDB Act has the jurisdiction to entertain an application submitted by a co-operative bank for recovery of its debts. The Division Bench on consideration of the provisions of Section 56 of the Banking Regulation Act, 1949 [for short "the BR Act"] came to the conclusion that 'Co- operative Bank' falls within the meaning of Section 2(d) of the RDB Act and, therefore, the only remedy available in terms of the provisions of the RDB Act to a co-operative bank after the constitution of the Tribunal under the RDB Act for recovery of debts due to it, is to apply to such a tribunal for an order.

The order of the High Court reveals that one Narendra Kanti Lal filed Writ Petition No. 6079/2002 in the High Court praying for setting aside the recovery certificate dated 6th September, 2000 issued by the Assistant Registrar (Co- operative Societies) in exercise of his powers under Section 101 of the MCS Act, 1960 and the warrant of attachment issued pursuant thereto on the application made by Jan Kalyan Sahakari Bank Limited, one of the respondents in the said petition. When that petition came up for admission before the learned Single Judge of the Bombay High Court, the petitioner therein brought to the notice of the learned Single Judge the earlier judgment of the Division Bench in Shamrao Vithalrao Co-operative Banks' case (supra). The learned Single Judge, however, was of the opinion that the Division Bench in its judgment did not consider that the MCS Act, 1960 has been enacted by the State Legislation under Entry 32, List II of the Seventh Schedule of the Constitution of India. The learned Single Judge having considered the importance of the question involved in the matter directed to place the matter before Hon'ble the Chief Justice of the High Court for Reference before the Full Bench. It appears that in the meantime, some more writ petitions came up before the Division Bench raising the same question. Hon'ble Chief Justice of the High Court decided to refer the matters to the Full Bench. This is how all the petitions were placed before the Full Bench for deciding the referred questions.

The Full Bench, after hearing the learned counsel for the parties and having gone through the various provisions of the Statutes and Entries 43, 44 and 45, List I of Seventh Schedule of the Constitution of India, answered the reference as under:-

"For all these reasons, therefore, we hold that on and from the date on which the Debts Recovery Tribunal was constituted under the 1993 Act, the courts and authorities under the 1960 Act as also the 2002 Act would cease to have jurisdiction to entertain the applications submitted by the Co-operative Banks for recovery of their dues."

However, the High Court held that the State Legislature was competent to enact the MCS Act, 1960.

In Civil Appeal No. 36/2006 titled A. P. State Co- operative Bank Limited v. Samudra Shrimp (P) Ltd. & Ors., after detailed examination of the various submissions before it, Full Bench of the Andhra Pradesh High Court in a batch of writ petitions, writ appeals and civil revision petitions struck down the constitutional validity of Sections 61 and 71 of the APCS Act, 1964. In the concluding portions, the High Court culled out as follows:-

"(a) That recovery of monies (whether called a debt, arrears or by any other name) due to a banking institution including a Co-operative Bank is a matter that integrally falls within the core and substantive area of the legislative field Banking in Entry-45, List-I of the Seventh Schedule of the Constitution.

(b) The above subject matter is therefore excluded from the State legislative field in Entry-32, List-II of the Seventh Schedule.

(c) Recovery of monies due to a Co-operative Bank is not a matter that falls within the incidental and ancillary areas of the State legislative field in Entry-32, List-II of the Seventh Schedule.

(d) A Co-operative Bank as defined in Section 5(cci) of the Banking Regulation Act, 1949 (as amended by Act 23 of 1965) is a Bank and a Banking Company within the meaning of Section 2(d) & (e) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

(e) A Tribunal constituted under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 has exclusive jurisdiction, powers and authority to entertain and decide applications from a Co-operative Bank for recovery of debts due to such bank, subject to the pecuniary limits of jurisdiction specified by or under the said Act.

(f) Section 71(1) of the 1964 Act in so far as it expressly confers power on the Registrar to issue a certificate for recovery of arrears of any sum advanced by a financing bank to its members, is beyond the legislative competence of the State.

(g) The words "or financing bank" in Section 71(1) of the Andhra Pradesh Co-operative Societies Act, 1964 expressly result in the provisions of the Section transgressing the State's legislative limits. These words being severable are therefore declared invalid.

(h) The provisions of Section 61 and 71 {after striking down of the words in Section 71(1)} are restrictively construed as excluding any jurisdiction, powers or authority in the Registrar in respect of recovery of debts or arrears due to a Co-operative Bank, its members or others which are advanced lent or otherwise made over to such member or person, during the course of the banking business of such Co-operative Bank

(i) (a)No claim, application or other proceedings lodged or instituted before the Registrar, by a Co-operative Bank for recovery of the amount/debt due from a member or other person pursuant to advances made in the course of its banking business could be entertained or determined by the Registrar

(b) Any award or order passed, certificate issued or an order in execution proceedings, by the Registrar on any claim or application of a Co-operative Bank, is patently and inherently without jurisdiction, null, void and inoperative.

(j) During the pendency of these writ petitions, by virtue of various court orders certain amounts have been deposited by some of the writ petitioners. At no point of time these writ petitioners have disputed the liability or the amount already deposited with the banks in pursuance of the orders of the Court. Therefore, we direct that the amounts deposed shall be retained by the concerned banks and adjusted against the liabilities, if any, that remain to be determined pursuant to proceedings

initiated by the respective banks in accordance with this judgment.

(k) In view of the declaration in this judgment, the respondent-banks are at liberty to proceed with the recovery of debts due to them, before the appropriate forum and under the appropriate law, in accordance with this judgment.

(l) As the proceedings initiated before the Registrar or any other authority under the 1964 Act were bona fide and as considerable time had been consumed in the litigation in this case also, the respondent-banks shall be entitled to set off the period spent in pursuing their claims before the Registrar or other fora and before this Court, in computing the period for filing appropriate applications/claims before the appropriate authority/Tribunal."

The Full Bench of the Andhra Pradesh High Court declared Sections 61 and 71 of the APCS Act, 1964 invalid being beyond legislative competence of the State and also in clear and direct conflict with the provisions of 'the RDB Act'. In interpreting the provisions of the two enactments, the Bench has employed the 'Doctrine of Reading Down'.

We have carefully perused the judgments of the Full Benches of the High Courts of Bombay and Andhra Pradesh impugned before this Court by the aggrieved parties. Before proceeding further to consider the legal question referred to the larger Bench, the provisions of the various Statutes relevant for our purpose may be first noticed.

THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960 [the MCS ACT, 1960]

The MCS Act, 1960 was promulgated and came into force on 26th day of January, 1962 relating to co-operative societies with a view to providing for the systematic development of the co-operative movement in the State of Maharashtra in accordance with the Directive Principles of State Policy enunciated in the Constitution of India. The object and the working of the co-operative banks had become so large that it was found necessary to extract more important provisions of the Banking Regulation Act, 1949 ['the BR Act'] and allied provisions of the Reserve Bank of India Act, 1934 ['the RBI Act'] to the co-operative banks in public interest.

Section 2 (10) of the MCS Act, 1960 defines "co-operative bank" 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 and includes any society which is functioning or is to function as a Co-operative Agriculture and Rural Multi-purpose Development Bank under Chapter XI. In Section 2(6) of the MCS Act, 1960 - "Central Bank" means a co-operative bank, the objects of which include the creation of funds to be loaned to other societies; but does not include the urban co-operative bank. Section 91 of the MCS Act, 1960 in Chapter IX deals with settlement of any dispute touching the constitution, conduct of general meetings, management or business of a society etc. to the Co- operative Court. Section 101 provides for recovery of arrears due to certain societies as arrears of land revenue in pursuance of the certificate granted by the Registrar. Under Section 18A of the Act, the Registrar is competent to amalgamate one or more co-operative banks in public interest or in order to secure their proper management.

Section 36 under Chapter IV makes every registered society as a corporate body having perpetual succession and common seal which acts through a Committee for management with rest of its authority being in General Body of members in meetings as provided in Sections 55, 72 and 73.

Section 43 provides that a society shall receive deposits and loans from members and other persons, only to such extent, and under such conditions, as may be prescribed or specified by bye-laws of the society. Section 44 regulates the loan making policy of a society. This Section provides that the society shall not make a loan to any person other than a member, or on the security of its own shares, or on the security of any person who is not a member. It empowers the Government to prohibit, restrict or regulate the lending of money by any society or class of societies on the security of any property. Section 50 under Chapter V provides for direct subscription by the State Government to the share capital of a society with limited liability upon such terms and conditions as may be agreed upon. Section 64 provides that no part of the funds other than the net profits of a society shall be paid by way of bonus or dividend, or otherwise distributed among its members. Chapter VII deals with Management of Societies. Section 72 provides that the final authority of every society shall, subject to the provisions of this Act and the Rules vests in the general body of members in general meeting. Section 73 empowers Committee to manage the society. Chapter VIII deals with Audit, Inquiry, Inspection and Supervision of the societies. Section 81 provides that the Registrar shall audit, or cause to be audited at least once in each co-operative year, by a person authorized by him by general or special order in writing in this behalf the account of every society which has been given financial assistance including guarantee by the State Government. Section 83 empowers the Registrar to conduct an inquiry into the constitution, working and financial conditions of a society. Chapter IX deals with Settlement of Disputes. A dispute touching the constitution, elections of the Committee or its officers other than election of committees of the specified societies including its officer, conduct of general meetings, management or business of a society is covered under sub-section (1) of Section 91 of the MCS Act, 1960. The settlement of disputes including the recovery of loan by a society from its members or sureties lies with the Co-operative Court. The Civil Court has no jurisdiction to try and entertain the suit in regard to the dispute which fall both in the purview of sub-section (1) of Section 91 of the Act. Section 92 regulates the period of limitation for different types of disputes mentioned in it and the disputes of the nature as provided in Section 91 has to be tried as a suit by the Co-operative Court as a Civil Court. Section 94 lays down the procedure for settlement of disputes and power of Co-operative Court. The Co-operative Court or the Registrar or the authorized person, as the case may be, if satisfied on inquiry or otherwise that a party to such dispute or the person against whom proceedings are pending under Section 88, with intent to defeat, delay or obstruct the execution of any award or the carrying out of any order that may be made is empowered to direct additional attachment of the property under Section 95. Any party aggrieved by any decision of the Co-operative Court or order passed by the Co- operative Court or the Registrar or the authorized person under Section 95 is at liberty to file appeal before the Co- operative Appellate Court under Section 97. Section 98 provides that orders mentioned therein if not carried out on a certificate signed by the Registrar or the Co-operative Court or a liquidator shall be executed in the same manner as a decree of civil court and shall be executed in the same manner as a decree of such court or be executed according to law and under the Rules for the time being in force for the recovery of arrears of land revenue. An application for such a recovery to be made to the Collector shall be accompanied by a certificate signed by the Registrar and shall be made within twelve years from the date fixed in the order and if no such date is fixed from the date of the order. Recovery Certificate is issued by the Registrar under sub-section (1) of Section 101 of the MCS Act, 1960 and the mode for recovery of the amount is under Section 156 of the Act. Chapter X deals with liquidation of the societies. Section 102 empowers the Registrar to issue an interim order of winding up of the society. An appeal against the winding up of the society shall be made by the aggrieved party to the State Government under Section 104. Section 105 lays down the powers of the liquidator. Cognizance by the Civil Court of any matter connected with the winding up or dissolution of a society under this Act is barred under Section 107.

THE ANDHRA PRADESH CO-OPERATIVE SOCIETIES ACT, 1964 [THE APCS ACT, 1964]

The Andhra Pradesh State Co-operative Bank Limited was formed by the amalgamation of the previous Andhra Pradesh State Co-operative Bank Limited, Vijayawada No. 2120 and Hyderabad Co-operative Apex Bank Limited, Hyderabad, under the Andhra Pradesh Co-operative Bank (Formation) Act, 1963 and by the merger of the Andhra Pradesh Central Agricultural Development Bank Limited, Hyderabad, under Act 14 of 1994 and was deemed to be registered as a Co-operative Society under the Andhra Pradesh Co-operative Societies Act of 1964 [the APCS Act, 1964].

The APCS Act, 1964 was enacted with Statement of Objects and Reasons to consolidate and amend the law relating to Co-operative Societies in the State of Andhra Pradesh in order to facilitate and strengthen the functioning of Co-operative Societies based on Co-operative principles and Co-operative identity. Section 2 deals with definitions clause. Clause (f) defines 'financing bank' to mean 'a society, the main object of which is to assist any affiliated or other society by giving loans or advancing moneys; and includes any scheduled bank as defined in the RBI Act and such other body corporate or financial institution as may be notified by the Government from time to time, which gives financial or other aid to a society'. Chapter II of the Act deals with Registration of Societies. A society which has, its main object, the promotion of the economic interests of its members in accordance with the Co-operative principles....., the registration of a society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal in terms of Section 9. In Chapter III, Section 19 prescribes the eligibility for membership of the Society. Under Chapter IV, the Management of Societies ultimately shall vest in the General Body, whereas Section 30-A empowers the General Body of every society to constitute a supervisory council to ensure that the affairs of the society are conducted in accordance with the principles of Co-operation, provisions of the Act, Rules, bye-laws and resolutions of the General Body. The General Body of a society is also empowered to constitute a Committee in accordance with the bye-laws and entrust the management of the affairs of the society to such Committee (Section 31 of the Act). Powers and functions of the Committee are provided under Section 31-A. Chapter V deals with the Rights and Privileges of the Societies. Under Section 35, the society has preferential charge upon the crop or other agricultural produce, cattle fodder for cattle, agricultural or industrial implements etc. owned by a member including a past or deceased member who is in default of payment of any debt or other amount due to a society. Such charge shall be available even as against any amount recoverable by the Government as if it were an arrear of land revenue. Section 47 empowers a society to receive deposits and raise loans only to such extent and under such conditions as may be specified in the bye-laws. Sub-section (2) prohibits the society from granting a loan to any person other than a member, but if general or special sanction is obtained from the Registrar, the society may grant loans to another society or its employees on such terms as may be specified in the bye-laws. Chapter VII deals with Audit, Inquiry, Inspection and Surcharge. Section 50 lays down that there shall be a separate wing for audit in the Co-operative Department headed by the Chief Auditor who will work under the general superintendence and control of the Registrar of Co-operative Societies. The Chief Auditor shall audit or cause to be audited by a person authorized by him by a general or special order in this behalf, the accounts of a society at least once in every year and shall issue or cause to be issued an audit certificate. The Registrar is also authorized under Section 51 to hold an inquiry into the constitution, working and financial condition of the society, either suo motu or on the application of the society to which the society concerned is affiliated. Under Section 52, the Registrar may, on his own motion or on the application of a creditor of a society, inspect or direct any person authorized by him by a general or special order in

this behalf to inspect the books of the society. Accounts and Books etc. of the societies are to be maintained and kept by the Chief Executive Officer of every society and the President of the society jointly and severally.

Chapter VIII of the APCS Act, 1964 deals with Settlement of Disputes touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society. Explanation to Section 61 prescribes the nature of the dispute for the purposes of sub-section (1) to include a claim by a society for any debt or other amount due to it from a member, past member, the nominee, heir or legal representative of a deceased member, whether such debt or other amount be admitted or not and a claim by surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or other amount due to be admitted or not. All such disputes, which are enumerated under Section 61 of the Act, shall be referred to the Registrar for decision. The Registrar is empowered to decide the dispute himself or transfer it for disposal to any person who has been invested by the Government with powers in that behalf or refer it for disposal to an arbitrator under Section 62 of the Act. Section 63 empowers the financing bank to proceed against members of a society for recovery of moneys due to it from such society. Under Section 64 contained in Chapter IX, if the Registrar, after an inquiry held under Section 51 or an inspection made under Section 52 or on receipt of an application made by not less than two-thirds of the members, is of the opinion that the society ought to be wound up, he may after giving the society an opportunity of making its representation, by order direct it to be wound up. Where the order of winding up is made under Section 64, the Registrar may appoint a Liquidator for that purpose under Section 65. Chapter X deals with Execution of Decisions, Decrees and Orders. The Registrar or any person authorized by him in this behalf is authorized to recover certain amount due under a decision or an order of the Registrar, or any person authorized by him, or an arbitrator by attachment and sale of property and execution of the orders. The recovery of any amount may be executed by the Civil Court having local jurisdiction on a certificate signed by the Registrar or any person authorized by him in this behalf as if the order or decision were a decree of that Court; or by the Collector, on an application made to him within twelve years from the date fixed for payment in the order or decision and if no such date fixed from the date of the order or decision, along with a certificate signed by the Registrar or by any person authorized by him in this behalf, as if the amount due under the order or decision were an arrear of land revenue. Section 71 provides for recovery of debts. It reads: "(1) Notwithstanding anything in this Act or in any other law for the time being in force and without prejudice to any other mode of recovery which is being taken or may be taken, the Registrar may, on the application made by a society or financing bank or federal society as the case may be, for the recovery of arrears of any sum advanced to any of its members and on furnishing a statement of accounts in respect of the arrears and after making such inquiry as he deems fit issue a certificate for the recovery of the amount stated therein to be due as arrears." If a society has failed to take action under sub-section (1) in respect of any amount due as arrears, the Registrar, after satisfying himself, may on his own motion issue a certificate for the recovery of the amount stated therein to be due as arrears and such a certificate shall be deemed to have been issued on an application made by the society concerned [sub-section (2)]. A certificate issued by the Registrar under sub-section (1) or sub-section (2) shall be final and conclusive proof of the arrears stated to be due therein and the certificate shall be executed in the manner specified in sub-section (2) of Section 70. The Registrar or any person authorized by him in this behalf shall be deemed, when exercising any power under this Act for the recovery of any amount by the attachment and sale or by sale without attachment of any property, or when passing any orders on any application

made to him for such recovery, or to take steps in aid of such property to be a Civil Court for the purpose of Article 182 of the First Schedule to the Indian Limitation Act, 1908 in terms of Section 72. Under Section 73, the Registrar is also empowered to make attachment of property before decision or order unless adequate security is furnished by a person, who is found to be defaulter of the loan of the society to direct the attachment of the said property before decision or the order.

Chapter XI deals with Appeal, Revision and Review. Under Section 75, the Government, for the purpose of this Act, is competent to constitute as many tribunals as may be necessary for such area or areas as may be specified in the Notification. The Tribunal shall consist of a Chairman and not more than two other members to be appointed by the Government. The Chairman shall be a person who is or has been a judicial officer not below the rank of a District Judge and a member shall be a person, who holds or has held a post not below the rank of Additional Registrar of Co-operative Societies. Any person or society aggrieved by any decision passed or order made by the Registrar or any other person authorized under the various provisions of the Act enumerated in Section 76 is free to file an appeal to the Tribunal. The Registrar under Section 77 is empowered to exercise the powers of revision either on his own motion or an application made to him by the aggrieved party.

THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002 ['THE MSCS ACT, 2002']

The Multi-State Co-operative Societies Act, 1984 was enacted by the Parliament and Section 74 thereof deals with various disputes including recovery of debts due to the co- operative banks. Parliament repealed the Multi-State Co- operative Societies Act, 1984 by the Multi-State Co-operative Societies Act, 2002 ["the MSCS Act, 2002").

The object of the MSCS Act, 2002 was to consolidate and amend the law relating to co-operative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of co-operatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto.

In Section 3(f) of the MSCS Act, 2002, a 'co-operative bank' means a multi-State co-operative society, which undertakes 'banking business'. Section 3(h) defines a 'co- operative society' to mean 'a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State'. In terms of Section 3(p), a 'multi-State co-operative society' means 'a society registered or deemed to be registered under this Act and includes a national co-operative society and a federal co-operative'. Chapter IV of the Act deals with members of multi-State co-operative societies and their duties, rights and liabilities. Settlement of disputes touching the constitution, management or business of a multi-State co-operative society are to be referred to an arbitration under Section 84 of Chapter IX of the Act. The order or decision recorded by the Authority under Section 39 or Section 40 or Section 83 or Section 99 or Section 101 can be executed in the manner provided in Chapter XI of the Act. Section 99 and Section 101 under Chapter XII provide for appeals to the Appellate Authority and review of its orders. Section 22 of the MSCS Act, 2002 provides for conversion of a Co-operative Society into a Multi-State Co-operative Society by an amendment in its bye-laws with the approval of the Central Registrar who shall consult the Registrars of co-operative societies of the State concerned. The Act provides for its own machinery for registering multi- State societies and for federal co-operatives thereunder as also the rights of the members, directors and managements and other matters like privileges, properties

and funds and matters connected therewith as well as machinery for settlement of disputes and winding up thereof as set out in about 38 Sections of the said Act beginning from Chapter VII to Chapter XIV.

THE RESERVE BANK OF INDIA ACT, 1934 [the RBI ACT] In Section 2 (i) of the RBI Act, "co-operative bank", "co- operative credit society", "director", "primary agricultural credit society", "primary co-operative bank" and "primary credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

Chapter III-A of RBI Act deals with Collection and Furnishing of Credit Information. In Section 45A (a) "banking company" means a banking company as defined in Section 5 of the Banking Regulation Act, 1949 (10 of 1949) and includes the State Bank of India, [any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), any corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), and any other financial institution notified by the Central Government in this behalf]".

THE BANKING REGULATION ACT, 1949 (the BR ACT):

This Act was brought into force on 16th March 1949. Section 3 of the BR Act clearly provides that the Act would apply to Co- operative Societies in certain cases, subject to the provisions of Part V of the Act. The BR Act defines "banking company" under Section 5 (c) as follows:-

(c) "banking company" means any company which transacts the business [in India]."

In Section 5(d) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act.

Chapter V of the BR Act was inserted by Act 23 of 1965 w.e.f. 1.3.1966. Section 56 of the Act provides that the provisions of this Act, as in force for the time being, shall apply to, or in relation to, banking companies subject to the following modifications namely :-

"Throughout this Act, unless the context otherwise requires:--

(i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank;

(ii) ....." The purpose and object of modifications were to regulate the functioning of the co-operative banks in the matter of their business in banking. The provisions of Section 56 itself starts with the usual phrase "unless the context otherwise requires" is to make the regulatory machinery provided by the BR Act to apply to co-operative banks also. The object was not to define a co-operative bank to mean a banking company, in terms of Section 5 (c) of the BR Act. This is apparent from the fact that instead of amending the original clause (c) of Section 5 separate clause (cci) was added to cover the 'co-operative bank' to mean 'a state co-operative bank, a central co-operative bank and a primary co-operative bank'. In clause (ccv) 'primary co-operative bank' means 'a co-operative society, other than a primary agricultural credit society. The primary object or principal business of the 'Co-operative Bank' should be the transaction of banking business. The modifications given in clause (a) of Section 56 are apparently

suitable to make the regulatory machinery provided by the BR Act to apply to co-operative banks also in the process of bringing the co-operative banks under the discipline of Reserve Bank of India and other authorities. A co-operative bank shall be construed as a banking company in terms of Section 56 of the Act. This is because the various provisions for regulating the banking companies were to be made applicable to co-operative banks also. Accordingly, Section 56 brought co-operative banks within the machinery of the BR Act but did not amend or expand the meaning of "banking company" under Section 5(c). On a plain reading of every clause of Section 56 of the BR Act, it becomes clear that what is contained therein is only for the purpose of application of provisions that regulate banking companies to co-operative societies. According to the expression "co-operative societies" used in Section 56 means a "co-operative society", the primary object or principal business of which is the transaction of banking business. In other words, first it is a co-operative society, but carrying on banking business having the specified paid up share capital. Other definitions also make it clear that the entities are basically co-operative societies.

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 [SECURITISATION ACT].

The Parliament had enacted the Securitistion and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ['the Securitisation Act'] which shall be deemed to have come into force on 21st day of June 2002. In Section 2(d) of the Securitisation Act same meaning is given to the word 'banking company' as is assigned to it in clause (e) of Section 5 of the BR Act. Again the definition of 'banking company' was lifted from the BR Act but while defining 'bank', Parliament gave five meanings to it under Section 2(c) and one of which is 'banking company'. The Central Government is authorized by Section 2 (c)(v) of the Act to specify any other bank for the purpose of the Act. In exercise of this power, the Central Government by Notification dated 28.01.2003, has specified "co-operative bank" as defined in Section 5 (cci) of the BR Act as a "bank" by lifting the definition of 'co-operative bank' and `primary co-operative bank' respectively from Section 56 Clauses 5(cci) and (ccv) of Part V. The Parliament has thus consistently made the meaning of 'banking company' clear beyond doubt to mean 'a company engaged in banking, and not a co-operative society engaged in banking' and in Act No. 23 of 1965, while amending the BR Act, it did not change the definition in Section 5 (c) or even in 5(d) to include co-operative banks; on the other hand, it added a separate definition of 'co-operative bank' in Section 5 (cci) and 'primary co-operative bank' in Section 5 (ccv) of Section 56 of Part V of the BR Act. Parliament while enacting the Securitisation Act created a residuary power in Section 2(c)(v) to specify any other bank as a bank for the purpose of that Act and in fact did specify 'co- operative banks' by Notification dated 28.01.2003. The context of the interpretation clause plainly excludes the effect of a reference to banking company being construed as reference to a co-operative bank for three reasons: firstly, Section 5 is an interpretation clause; secondly, substitution of 'co-operative bank' for 'banking company' in the definition in Section 5 (c) would result in an absurdity because then Section 5 (c) would read thus: "co-operative bank" means any company, which transacts the business of banking in India; thirdly, Section 56 (c) does define "co-operative bank" separately by expressly deleting/inserting clause (cci) in Section 5. The Parliament in its wisdom had not altered or modified the definition of 'banking company' in Section 5 (c) of the BR Act by Act No.23 of 1965.

As noticed above, "Co-operative bank" was separately defined by the newly inserted clause (cci) and "primary co- operative bank" was similarly separately defined by clause (ccv). The meaning of 'banking company' must, therefore, necessarily be strictly confined to the words used in Section 5(c) of the BR Act. If the intention of the Parliament was to define the 'co-operative bank' as 'banking

company, it would have been the easiest way for the Parliament to say that 'banking company' shall mean 'banking company' as defined in Section 5(c) and shall include 'co-operative bank' and 'primary co-operative bank' as inserted in clauses (cci) and (ccv) in Section 5 of Act 23 of 1965.

THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 ("the RDB Act"). The Recovery of Debts Due to Banks and Financial Institutions Act, 1993['the RDB Act'] was enacted by the Parliament with the objects and reasons for the recovery of the debts due to the banks. Before the coming into force of the RDB Act, the banks were approaching Civil Courts for recovery of their debts from the defaulters by filing civil suits before the Civil Courts of competent jurisdiction. After the coming into force of the RDB Act on the 25th day of June 1993, the jurisdiction of the Civil Courts was taken away. The decision to have separate Bank Tribunals was taken by the Central Government after considering the increasing workload of the Civil Courts and delay in disposal of the bank suits. The Statement of Objects and Reasons for the enactment of the RDB Act are that the banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the financial system headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realized without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfill a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on 30th September, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various Courts, recovery of debts involved more than Rs.5622 crores in dues of Public Sector Banks and about Rs.391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilization and re-cycling of the funds for the development of the country.

The provisions of the RDB Act, which are relevant, are referred to in the following paragraphs.

Section 2(d) defines "banks" to mean (i) a banking company; (ii) a corresponding new bank; (iii) State Bank of India; (iv) a subsidiary bank; or (v) a Regional Rural Bank. In terms of clause (e) "banking company" shall have the meaning assigned to it in clause (c) of Section 5 of the BR Act. Chapter II of 'the RDB Act' provides for establishment of Tribunal(s) and Appellate Tribunal(s) and the qualifications of person(s) for appointment as Presiding Officer of the Tribunal and a Chairperson of the Appellate Tribunal, their term of office and other service conditions. Section 17 in Chapter III provides for Jurisdiction, Powers and Authority of Tribunals. Section 18 bars the jurisdiction of a Civil Court in relation to the matters specified in Section 17.

Chapter IV prescribes procedure, powers and jurisdiction of the Tribunals and Appellate Tribunals and application of the provisions of the Limitation Act, 1963. Chapter V of the RDB Act emphasizes mode of recovery of debts/loans by the Tribunal/Recovery Officer.

ENTRIES 43, 44 & 45 OF LIST I AND ENTRY 32 OF LIST II OF THE SEVENTH SCHEDULE OF THE CONSTITUTION OF INDIA

The legislative field in constitutional terms has to be determined in terms of Articles 245 and 246 and Entries 43, 44 and 45 of List I and Entry 32 of List II of Seventh Schedule of the Constitution of India.

Entry 43 of List I of the Seventh Schedule is as follows: "43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies."

Entry 44 is as follows:-

"Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities."

Entry 45 is as follows:-

"Banking."

Entry 32 of List II is as follows:-

"32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations; co-operative societies."

In the light of the factual situation and having gone through the above-said relevant provisions of different Statutes and relevant Entries of Lists I and II of the Seventh Schedule of the Constitution, we have heard the learned counsel for all the parties and with their assistance we have gone through the decisions brought before us by them.

Mr. S. Ganesh, learned Senior Advocate appearing on behalf of the appellant in Civil Appeal Nos.432 to 434 of 2004, vehemently contended that the High Court of Bombay completely failed to appreciate the meaning of "banking company" as defined in Section 5(c) of the BR Act which clearly and indisputably does not cover or include a 'co- operative bank' registered under the MCS Act, 1960 or the MSCS Act, 2002. He submitted that Section 56 of the BR Act did not amend the definition of 'banking company' in terms of Section 5 (c), but for all intents and purposes Act No.23 of 1965 merely extends the application of the provisions of the BR Act to 'a co-operative bank' even though it is not a 'banking company' as defined in Section 5(c). He contended that the Parliament in its wisdom did not make the RDB Act applicable to all banks to which the provisions of the BR Act were made applicable. It was urged that the reason why co-operative banks were excluded from the ambit of the operation of 'the RDB Act by confining the said Act only to a "banking company" as defined in Section 5(c) of the BR Act was that under the MCS Act, 1960 Act and the MSCS Act, 2002 co- operative banks established under the Societies Act had an effective and speedy machinery for recovery of their dues and, therefore, it was neither necessary nor beneficial to make the RDB Act applicable to co-operative banks for the recovery of dues from their members under the respective State Co- operative Legislations. He next contended that the co- operative banks

established under the MCS Act, 1960 and the MSCS Act, 2002 and transacting the business of banking shall advance loan to their members only as per the provisions contained in both these Statutes and not to any other person. Therefore, under these enactments "co-operative banks" can only recover their dues from their members, whereas the RDB Act will be applicable to all other banks, which have advanced loan to any person/society/corporation/industry, etc. etc. without any stipulation of membership of the Banks.

Mr. Amar Dave, Advocate appearing in IA Nos.10-11 of 2006 in Civil Appeal No.432 of 2004, submitted that as per the Scheme of the BR Act, the legislative intention is to classify co- operative banks as completely a separate category and the same cannot be included in "Banking Company" in terms of Section 5 (c) of the Act. He contended that it has been well demonstrated from the Statement of Reasons and Objects behind the passing of the RDB Act itself, that the same was enacted merely for expeditious adjudication and recovery of debts due to Banks and Financial Institutions. The Committees formed prior to the enactment of the RDB Act also more or less did not cover the co-operative banks for the purposes of the recommendations in general for improving the recovery system. He next contended that the recovery of debts by the co-operatives from their members are covered by specific Acts such as the Co-operative Societies Acts of the States, which are comprehensive and self-contained legislations. Further submission was that for multi-state co-operatives, there is a specific enactment in the form of the MSCS Act, 2002 comprehensively providing the legal framework in respect to issues pertaining to such co- operatives. Therefore, co-operative banks are, in any case, not covered by the provisions of the RDB Act by invoking the doctrine of incorporation. He next submitted that the State's power under List II, Entry 32 of Seventh Schedule of the Constitution is not subject to or subordinate to the power of the Union List I, Entry 45.

Dr. Rajeev Dhavan, learned Senior Advocate, appearing for respondents in Civil Appeal No. 6069/2005 was requested to assist the Court in those matters which were listed on the Board on the day when the matters were heard. He contended that both List I, Entries 43 and 45 as well as List II, Entry 32 of the Seventh Schedule must be given the widest possible interpretation in their respective spheres. He submitted that although Article 246 (1) begins with a non-obstante clause, easy recourse should not be made to the non-obstante clause without first making an effort of reconciliation between the Union and the State Entries. In other words, under a federal set up, the States are not to be readily denuded of powers which the Constitution makers gave to them as exclusively reposted in them. He contended that it was really the intention of the Constitution makers to ensure that the provision is made for Peoples' co-operatives and the idea of co- operatives and people are necessarily interlinked associations and organizations. Learned senior counsel made a reference to a decision of this Court in Zoroastrian Co-operative Housing Society Ltd. v. District Registrar, Co-operative Societies (Urban) [(2005) 5 SCC 632] at Para 15: "..... The co-operative movement by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon principles of equity, reason and common good....".

He then contended that on plain reading of definitions of 'bank' [Section 2(d)]; 'banking company' [Section 2(e)], 'debt' [Section 2(g)] and 'financial institution' [Section 2(h)] of the RDB Act, it becomes clear that the Act is concerned with debts of corporate banks and financial institutions which were constituted under List I, Entry 43 and the concept of 'banking' under Section 5(b) of the BR Act is very different from the activity of a 'financing bank' under the APCS Act, 1964.

Mr. K. N. Bhat, learned Senior Advocate appearing on behalf of the Reserve Bank of India in SLP

(C) No.22621 of 2005 contended that the pith and substance of the Co- operative Societies Acts enacted by various States must be taken into consideration and not a particular activity of the society. He next contended that the expression "co-operative bank" in Section 56(cci) means a 'State Co-operative Bank', a 'Central Co-operative Bank' and definition of 'Primary Co- operative Bank' in clause (ccv) means a 'co-operative society' the primary object or principal business of which is the transaction of banking business and no attempt is made by the Parliament to amend Section 5(c) of the BR Act to include 'co-operative societies' doing the business of banking within the meaning of 'banking company' as defined in Section 5 (c) of the RDB Act.

Mr. Bhim Rao Naik, learned senior counsel appearing on behalf of the Cosmos Co-operative Bank Ltd. in Civil Appeal No.436 of 2004, submitted that the definition of 'banking company' under Section 2(d)(i) of the RDB Act on its plain reading indicates that it does not refer to co-operative banks, but to companies incorporated under the Companies Act. He contended that Section 56 of the BR Act creates a fiction only for the purposes of the said Act and cannot be applied to another Act, viz., the RDB Act in the absence of any indication to that effect. He next contended that the State Legislature by virtue of Entry 32, List II of the Seventh Schedule has the power to make law with respect to co-operative societies including societies doing banking business. Learned counsel also contended that the MCS Act, 1960 and the MSCS Act, 2002 both deal with their members and as per regulation of loan making policy, loan can be given to the members only of the societies subject to certain exceptions and in any event under Entry 43, List I, the Parliament cannot legislate on incorporation of Co-operative Societies since Co-operative Societies are excluded in Entry 43 of List I of the Seventh Schedule to the Constitution.

Mr. Vinod A. Bobde, learned senior counsel appearing on behalf of the State of Andhra Pradesh in SLP (C) Nos. 25246- 25247 of 2005, challenging the judgment and order of the High Court of Andhra Pradesh, strenuously contended that Section 56 was inserted in the BR Act to make that Act applicable with modifications to co-operative banks with the main object to regulate the functioning of the co-operative banks in the matter of their business as the banking companies were regulated (Part II), control over management (Part IIA) and all other aspects contained in the BR Act. The modifications given in clause (a) of Section 56 are apparently for suitably applying the substantive provisions of the Act to co-operative banks and do not touch that part of the Act which is in the interpretation clause. He then contended that the judgment of the High Court is erroneous on the grounds: firstly, the co-operative societies have been deprived of the right to engage in the business of banking altogether; second, the co-operative societies have been deprived of speedy, easily accessible and inexpensive remedies for recovery of their dues from members; thirdly, persons depositing monies in co- operative banks have been deprived of their remedies under the A. P. (Protection of Interests of Depositors and Financial Establishments) Act, 1999; and fourthly, while claims over Rs.10 lakhs by co-operative banks will have to go to the Debt Recovery Tribunals and claims below that sum will remain under the APCS Act, 1960 as amended in 1964.

Mr. T. R. Andhyarujina, learned Senior Advocate appearing on behalf of Andhra Pradesh State Co-operative Bank Ltd. in Civil Appeal No.36 of 2006, vehemently contended that Co-operative Societies do a variety of activities for their members according to co-operative principles of voluntary and open membership controlled by their members. The Co-operative Banks are distinguished from banking companies who do not have to conform to such co-operative principles and who can give loans to the public. He submitted that prior to the Banking Laws (Application to Co-operative Societies) Act, 1965 (Act 23 of 1965), Co-operative Societies doing banking were not subject to regulation of their business of banking although deposits and working funds of Co-

operative Banks were very large, but Act 23 of 1965 introduced a new Chapter V to the BR Act and regulated the banking business of Co-operative Societies as it had regulated banking by banking companies with necessary modification. He submitted that recovery of loan by the Co-operative Banks are ancillary and necessary for the banks and every bank must have the power to refer disputes for adjudication and recover loans, etc. as expressly conferred by special provisions in the State Co-operative Societies Acts and Regulation of Co- operative Societies which fell under Entry 32, List II. He also submitted that Entry 45, List I, is limited to laws which affect the essential business of a bank qua the bank viz. banking as defined in Section 2(b) of the BR Act. He then contended that there was a conscious and deliberate omission to exclude "Co- operative Bank" in the definition of "Banking Company" in Section 2(d) of RDB Act, whereas all other five categories of Banks were included in the said definition and nothing prevented the framers of the Statute to include "Co-operative Bank" in the definition clause of the BR Act. It was next contended that significantly the Co-operative Banks have been brought in by the Parliament in Section 2(c)(v) of the Securitization Act by way of a Notification and enabling provisions and the purpose of Part III of the Securitization Act is also recovery of banks' dues, but the RDB Act employed no such device.

Per contra, Mr. S. B. Sanyal, learned senior counsel for the respondents in Civil Appeal No.6077 of 2005, while adopting the reasoning of the High Court in the order under challenge submitted that throughout the BR Act wherein banking company or company does occur, it would also include co-operative bank on conjoint reading of Section 2(e) of the RDB Act and Section 5(c) of the BR Act as amended on or from 01.03.1966. He submitted that the conclusion is irresistible that the RDB Act will embrace debts due to co- operative bank which can only be recovered by the Tribunal constituted under Section 17 which shall have the sole jurisdiction under Section 18 and no authority or court is entitled to exercise any jurisdiction to recover such debt, in view of Section 34 which envisages that the RDB Act will have an overriding effect, notwithstanding any other law for the time being in force. He next contended that Section 6 of the BR Act applies to all banks doing banking business including commercial banks and as per command of Section 56(1)(a) of the said Act, business of banking company will include business of co-operative banks as the co-operative banks are also advancing money either on security or without security to third parties and not restricted to members of societies. He contended that in the matter of grant of loan etc., co-operative bank has only one restraint that is to obtain approval from Reserve Bank of India which is manifest from Section 20(2)(b) of the BR Act and grant of unsecured loan and advances by co-operative bank to any other person or on bills of exchange of commercial transaction is permissible. Learned senior counsel further submitted that Section 47 of the APCS Act, 1964 is not the machinery through which the debt arising out of banking transaction can be recovered from one and all. Similarly, under Section 61 of the APCS Act, 1964 the dispute which falls within the jurisdiction of Registrar are disputes between members, past members, employees, legal representatives of the deceased employees whereas the disputes between primary co-operative bank qua depositors, loanees, holder of bills of exchange giving rise to debt is beyond the scope of Section 61. He submitted that the transaction of the banking business by co-operative bank is patent, manifest and direct and it can neither be incidental nor ancillary as the definition of "primary co-operative bank" incorporated in Section 56 of the BR Act in no uncertain terms pronounces its primary object or principal business as banking business. Learned senior counsel lastly submitted that the RDB Act enacted by the Parliament is later in point of time than the APCS Act, 1964, both being special law for recovery of dues, the law of Parliament will override the law enacted by the State.

Mr. J.V. Suryanarayana, learned senior counsel appearing on behalf of the respondents in Civil Appeal No.916 of 2006, submitted that in Section 56 of the BR Act, several sub-sections were

incorporated by Amending Act No.23 of 1965 whereby the co-operative societies of three categories, viz., (1) Primary Co-operative Societies; (2) State Co-operative Societies; and (3) Central Co-operative Societies, which are doing banking business are defined as 'banking companies' within the meaning of Section 2(d) of the RDB Act. He submitted that the appellant-bank (Vasavi Co-operative Urban Bank Ltd.) is to be construed as a banking company as mentioned in Section 5(c) of the BR Act by reason of Section 56(a)(i) of Act No.23 of 1965, in the manner and to the extent the amendments provided, therefore, it was the clear intention of the Parliament to apply all Banking Laws mutatis mutandis to Co-operative Societies which have become co-operative banks by undertaking banking business as defined in Section 5(b) of the BR Act. He next submitted that recovery of debts is an essential ingredient of banking and the Parliament was empowered under Entry 45 of List I, relating to banking to constitute such Tribunals, without any reference to Entry 11A of the Concurrent List. The enactment itself is clearly indicative of the desire of Parliament to legislatively control, under Entry 45 of List I, "Banking" by Co-operative Societies, as it is the "Dominant Legislation" by virtue of Article 246 (1) and the State legislation under Entry 32 of List II has to be construed, accordingly and read down if necessary. He submitted that the scope of Entry 32 of List II of Seventh Schedule is to enable the State Legislature to incorporate an entity known as a co-operative society, but does not enable the said entity to carry on banking.

Mr. Raju Ramachandran, learned senior counsel appearing in Civil Appeal No.432 of 2004 for the intervenors assisted by Dr. P. B. Vijay Kumar, Advocate, submitted that even if the co-operative bank lends loans only to its members, it will not alter characteristics of the banking company in the light of the Amending Act No.23 of 1965. He submitted that co-operative banks and co-operative companies are covered by the definition of Section 5 (c) of the BR Act.

Mr. Raghavendra S. Srivatsa, learned counsel appearing on behalf of the appellant-bank in Civil Appeal No.916 of 2006, submitted that the High Court of Andhra Pradesh has failed to appreciate the distinction between the definition of "banking company" under Section 5(c) of the BR Act and Section 2(c) of the RDB Act. He submitted that the Parliament had kept the definition of "banking company" under Section 5(c) intact by adding new definition of "co-operative bank" in clause (cci) and "primary co-operative bank" in clause (ccv) of the Act No. 23 of 1965.

Mr. T. Raja, learned counsel appearing on behalf of the petitioners in SLP (C) No.5598 of 2004, submitted that the RDB Act is a special Statute enacted by the Parliament and the Co-operative Societies Act is a general Statute in nature. Therefore, the RDB Act will apply for the recovery of the loans advanced by the co-operative banks whereas Co-operative Societies Act shall become inoperative.

Mr. S. Nanda Kumar, Advocate appearing on behalf of respondent No. 3 in SLP (C) No.5598 of 2004, supported the contentions advanced by Mr. T. Raja, Advocate.

Dr. N. M. Ghatate, learned senior counsel appearing on behalf of respondent Nos.1 to 5 in Civil Appeal No.436 of 2004, submitted that the subject of banking is covered in Entry 45, List I of the Seventh Schedule of the Constitution and as the recovery of debts/dues by the banks is an essential part of banking business, the Parliament has legislative competence to legislate on the subjects. He submitted that as soon as the Parliament legislates under Entry 45, List I and makes a law relating to recovery of dues by the banks, the provisions contained in the Co-operative Societies Acts relating to the subject will cease to operate in relation to the co-operative banks and the co-operative banks will follow the same procedure for recovery of the dues as laid down in the RDB Act. He then

submitted that the co-operative bank will have to be included in the definition of the term "banking" as defined in Section 2(d) of the RDB Act as Section 5(c) of the BR Act cannot be read in isolation ignoring Section 56 of the Act. He submitted that the doctrine of occupied field because of paramountcy, central legislation will operate over State Law but to the extent the State Law is inconsistent or in conflict with the Central Law. In support of this submission, reliance is placed upon M/s Fatehchand Himmatlal & Ors. v. State of Maharashtra [(1977) 2 SCC 670 para 56]. He contended that from the date on which the Debts Recovery Tribunal was constituted under the RDB Act', the courts and authorities under the MCS Act, 1960 as also the MSCS Act, 2002 would cease to have jurisdiction to entertain the applications submitted by the co-operative banks for recovery of their dues. He next submitted that pith and substance of co-operative banks and other banks is the same as their primary function is taking deposits from public, financial institutions etc. and recovering the debt with interest. He also submitted that Entries in the Seventh Schedule should not be read narrowly but with widest amplitude as they deal with legislative competence of Parliament and the State Legislatures. To support this contention, reliance is placed on R. C. Cooper v. Union of India [(1970) 1 SCC 249 at para 36].

Mr. Shekhar Naphade, learned senior counsel appearing on behalf of the petitioners in SLP (C) Nos.15621-15622 of 2005 and in Civil Appeal Nos.2819-22 of 2006, contended that Article 246 (1) of the Constitution of India is the source of the power vested in the Parliament to enact laws and if the subject matter of the legislation in its substantive form or even in its incidental manifestation is covered by List I and if the Parliament makes a law covering that aspect of the matter then the law made by the Parliament will override the law made by the State Legislature which otherwise would have been valid on the basis of doctrine of pith and substance. He contended that the RDB Act enacted by the Parliament being paramount must supersede pro tanto the provisions of the MCS Act 1960, which was enacted by the State Legislature. In support of this submission, reliance was placed upon M/s Hoechst Pharmaceutical Ltd. & Ors. v. State of Bihar & Ors. [(1983) 4 SCC 45]. He also stated that the co-operative banks carrying on banking business as defined in Section 5(b) of the BR Act and the recovery of claims by the banks against the borrowers and debtors is a matter integrally and essentially connected with the banking business as the subject matter of banking or the legislative field of banking is covered by Entry 45, List I of the Seventh Schedule of the Constitution of India and, therefore, it is open to the Parliament to establish courts and tribunals or any other machinery for recovery of banks' claims. He submitted that the ambit and scope of Entry 32, List II is only relating to the incorporation, the management of the affairs of the co- operative society, the powers of the Managing Committee, the powers of General Body, the control of the Registrar or the State Government over the affairs of the society, admission of members, expulsion of members and disputes amongst members etc. but the banking sector whether in public sector or in private sector or in co-operative sector is one unified banking industry. He next submitted that the banking regulation laws contained either in the BR Act or in the RBI Act or other provisions will cover the whole spectrum of banking sector and it is, therefore, in the fitness of things that even for the recovery of the claims of the banks against the borrowers there should be one unified machinery and unified set of procedure and the same is to be found in the RDB Act. In the last, the learned counsel supported the judgments and orders of the High Court of Bombay and the High Court of Andhra Pradesh holding that as the co-operative banks are transacting banking business, they are covered by the definition of "banking company" under Section 5(c) of the BR Act, therefore, the Tribunal constituted under Section 3 of the RDB Act has jurisdiction and power under Section 17 to decide claims of all banks including the co-operative banks.

Mr. U. U. Lalit, learned Senior Advocate appearing on behalf of the respondent in Civil Appeal

No.38 of 2006, contended that it is the exclusive domain of Union of India under Entry 45 List I of Seventh Schedule of the Constitution to enact laws in regard to banking. Co-operative banks transacting the banking business are, therefore, covered by the RDB Act in terms of the meaning of "banking company" under Section 2(d) of the Act.

In the light of the contentions of the learned counsel for the parties appearing before us and on an analysis of the various provisions of the relevant Statutes, two questions arise for our consideration which are:-

INTERPRETATION CLAUSE:

[a] Whether the RDB Act applies to debts due to co- operative banks constituted under the MCS Act, 1960; the MSCS Act, 2002 and the APCS Act, 1964?

CONSTITUTIONAL CLAUSE:

[b] Whether the State Legislature is competent to enact legislation in respect of co-operative societies incidentally transacting business of banking in the light of Entry 32, List II of Seventh Schedule of the Constitution?

QUESTION NO. 1

The dues of co-operatives and recovery proceedings in connection therewith are covered by specific Acts, such as the MCS Act, 1960 and the APCS Act, 1964, which are comprehensive and self-contained legislations. Similarly, for Multi-State Co-operatives there is a specific enactment in the form of the MSCS Act, 2002 comprehensively providing the legal framework in respect to issues pertaining to such co- operatives. Therefore, when there is an admittedly existing legal framework specifically dealing with issues pertaining to co-operatives and especially when the co-operative banks are, in any case, not covered by the provisions of the RDB Act specifically, there is no justification of covering the co- operative banks under the provisions of the RDB Act by invoking the Doctrine of Incorporation. In Surana Steels Pvt. Ltd. etc. v. Deputy

Commissioner of Income Tax & Ors. etc. [(1999) 4 SCC 306], this Court examined an incorporation by reference and concluded that the part of the incorporated Act from which a provision is taken can be looked at only to ascertain the meaning of the incorporated provision, but the other provisions cannot be deemed to be incorporated when they are not actually incorporated.

The distinction between peoples' co-operative banks serving their members and corporate banks doing commercial transactions is fundamental to the constitutional dispensation and understanding co-operative banking generally and in the context of cooperative banking not coming under the ambit of the BR Act. Thus, even if the co-operatives are involved in the activity of banking which involves lending and borrowing, this is purely incidental to their main co-operative activity which is a function in public domain.

The RDB Act was passed in 1993 when Parliament had before it the provisions of the BR Act as amended by Act No. 23 of 1965 by addition of some more clauses in Section 56 of the Act. The Parliament was fully aware that the provisions of the BR Act apply to co-operative societies as they apply to banking companies. The Parliament was also aware that the definition of 'banking

company' in Section 5 (c) had not been altered by Act No. 23 of 1965 and it was kept intact, and in fact additional definitions were added by Section 56(c). "Co- operative bank" was separately defined by the newly inserted clause (cci) and "primary co-operative bank" was similarly separately defined by clause (ccv). The 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 'co-operative bank' as defined in Section 5 (cci) and 'primary co-operative bank' as defined in Section 5 (ccv). However, the Parliament did not do so. There was thus a conscious exclusion and deliberate commission of co-operative banks from the purview of the RDB Act. The reason for excluding co-operative banks seems to be that co-operative banks have comprehensive, self- contained and less expensive remedies available to them under the State Co-operative 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.

The RDB Act was, therefore, designed to deal with other banks and financial institutions which had to have recourse to the time-consuming process of the Civil Courts. The Statement of Objects and Reasons, stated hereinabove refers to more than 15 lakh cases filed by public sector banks and about 304 cases filed by the financial institutions pending in various courts. The Statement of Objects and Reasons also refers to the Tiwari Committee which had expressly commented on delays in 'civil courts' and the Narsimhan Committee which recommended setting up of Special Tribunals.

Accordingly, the burden of the Civil Courts in the matter of suits by banks and financial institutions was shifted to the Debt Recovery Tribunals. The disputes between co-operative banks and their members were being taken care of by the State Co-operative Acts and they were to remain where they were. If co-operative disputes are also to go to the Debt Recovery Tribunals, then those Tribunals will be over- burdened and the whole object of speedy recovery of debts due to banks and financial institutions would be defeated. The Co-operative Societies Acts on the one hand and RDB Act on the other cannot be regarded as supplemental to each other viz., the provisions of the said Acts cannot be said to be pari- materia.

This Court in Virendra Pal Singh v. District Assistant Registrar [(1980) 4 SCC 109] directly deals with the question of the legislative competence relating to a co-operative society doing banking business. This decision in clear terms has laid down in para 10 as under:-

"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 and Ors. v. Bank of Commerce Ltd., the Privy Council was confronted with the question whether the Bengal Money-Landers Act fell within entry 27 in List II of the Seventh Schedule to the Government of India Act, 1935, which was 'money landing', in respect of which the Provincial Legislature was competent to legislate, or whether it fell within entries 28 and 38 in the 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 :

Subjects must still overlap, and where they do the question must be asked what in pith and

substance in 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, such 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. Co-operative 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 Cooperative Bank Ltd. v. Divisional Joint Registrar, Cooperative Societies, AIR 1971 SC 365 and Sant Sadhu Singh v. the State of Punjab, AIR 1970 PLH 528."

Section 31 of the RDB Act clearly refers to transfer of 'every suit or other proceeding pending before any court'. The word 'court', in the context of the RDB Act, signifies 'civil court'. It is clear that the Registrar, or an officer designated by him or an arbitrator under Sections 61, 62, 70 and 71 of the APCS Act, 1964 and under Section 91 and other provisions of Chapter IX of the MCS Act, 1960 are not 'civil courts'.

In Harinagar Sugar Mills v. Shyam [1962 (2) SCR 339], this Court held: "By 'courts' is meant courts of civil judicature and by 'tribunals' those bodies of men who are appointed to decide controversies arising under certain special laws. Among the power of the State is the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State". In Ram Rao & Anr. v. Narayan & Anr. [AIR 1969 SC 724], it was held that the nominee of Registrar appointed under Section 95 of the Maharashtra Co-operative Societies Act, 1961 is not a 'Court' within the meaning of Section 195, Cr.P.C..In Kihoto Hollohan v. Zachillhu & Ors. [(1992) Supp.(2) SCC 651 para 98], it was held that all tribunals are not courts, though all courts are tribunals. The word 'courts' is used to designate those tribunals which are set up in an organised State for the Administration of Justice...".

In Supreme Court Legal Aid Committee representing undertrial prisoners v. Union of India [(1994) 6 SCC 731 para 14], it was held: "it is common knowledge that a 'court' is an agency created by the sovereign for the purpose of administrating justice. It is a place where justice is judicially administered. It is a legal entity".

The decision cited by the respondents in Thakur Jugal Kishore v. Sitamarhilt [1967 (3) SCR 163] does not refer to the earlier Constitution Bench decisions in ACC v. P. N. Sharma and Harinagar Sugar Mills v. Shyam (supra). At best, the Assistant Registrar could have been held to be a 'tribunal' but not a 'court'.

In a later decision in the case of Rama Rao & Anr. v. Narayan & Anr. [(1969) 1 SCC 167], a two-Judge Bench has taken a contrary view and held that under the MCS Act, 1960, the nominee of the Registrar for deciding a dispute under Section 91 (which is equivalent to Section 61 of the A. P. Act of 1964) is not a 'court'. Obviously, laws relating to co-operative societies are special laws and the

disputes entrusted to Registrars are special disputes in respect of which the jurisdiction of civil courts is ousted.

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 afore-said. 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.

Finally, it could not be said that Amendments in Chapter V, Section 56 of the RDB Act by Act No. 23 of 1965 inserting "co-operative bank" in Clause (cci) and "primary co-operative bank" in Clause (ccv) either expressly or by necessary intentment apply to the co-operative banks transacting business of banking.

QUESTION NO. 2

The constitutional validity of an Act can be challenged only on two grounds, viz. (i) lack of legislative competence; and (ii) violation of any of the Fundamental Rights guaranteed in Part III of the Constitution or of any other constitutional provision. In State of A. P. & Ors. v. McDowell & Co. & Ors. [(1996) 3 SCC 709], this Court has opined that except the above two grounds, there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the afore-mentioned two grounds.

Power to enact a law is derived by the State Assembly from List II of the Seventh Schedule of the Constitution. Entry 32 confers upon a State Legislature the power to constitute co- operative societies. The State of Maharashtra and the State of Andhra Pradesh both had enacted the MCS Act, 1960 and the APCS Act, 1964 in exercise of the power vested in them by Entry 32 of List II of the Seventh Schedule of the Constitution. Power to enact would include the power to re-enact or validate any provision of law in the State Legislature, provided the same falls in an Entry of List II of the Seventh Schedule of the Constitution with the restriction that such enactment should not nullify a judgment of the competent court of law. In the appeals/SLPs/petitions filed against the judgment of the Andhra Pradesh High Court, the legislative competence of the State is involved for consideration. Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances, it is imperative upon the Courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it is the duty of the constitutional courts under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when Parliament or the State Legislature had assumed to enact a law which is void, either for want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the Fundamental Rights enshrined and guaranteed in Part III of the Constitution.

As observed by this Court in CST v. Radhakrishnan in considering the validity of a Statute the presumption is always in favour of constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. For sustaining the constitutionality of an Act, a Court may take into consideration matters of common knowledge, reports, preamble, history of the times, objection of the legislation and all other facts which are relevant. It must always be presumed that the legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations. It is also well- settled that the courts will be justified in giving a liberal interpretation in order to avoid constitutional invalidity. A provision conferring very wide and expansive powers on authority can be construed in conformity with legislative intent of exercise of power within constitutional limitations. Where a Statute is silent or is inarticulate, the Court would attempt to transmutate the inarticulate and adopt a construction which would lean towards constitutionality albeit without departing from the material of which the law is woven. These principles have given rise to rule of "reading down" the provisions if it becomes necessary to uphold the validity of the law.

In State of Bihar & Ors. v. Bihar Distillery Ltd. & Ors. [(1997) 2 SCC 453], this Court indicated the approach which the Court should adopt while examining the validity/constitutionality of a legislation. It would be useful to remind ourselves of the principles laid down, which read: (SCC p.466, para 17):

"The approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ignored out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application." In the same para, this Court further observed as follows: "The Court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the legislature and the executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution recognizes and gives effect to the concept of equality between the three wings of the State and the concept of "checks and balances" inherent in such scheme."

The principles of legislative competence were stated with precision by the Federal Court in Subramanyan Chettiar v. Muttuswami Goundan [AIR 1941 FC 47] as follows:-

"It must inevitably happen from time to time that legislation though purporting to deal with a subject in one list, touches also upon a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determine whether it is legislation with respect to matters in this list or that."

In A. S. Krishna v. State of Madras [1957 SCR 399 at page 410], this Court applied these principles.

In State of Rajasthan v. Chawala [1959 (Suppl.1) SCR 904 at 909] Hidayatullah J. aptly described the principles of pith and substance as under:-

"The pith and substance of the impugned Act is the control of the use of amplifiers in the interests of health and also tranquility, and thus falls substantially (if not wholly) within the powers conferred to preserve, regulate and promote them and does not so fall within the Entry in the Union List, even though the amplifier, the use of which is regulated and controlled is an apparatus for broadcasting or communication. As Latham, C. J., pointed out in Bank of New South Wales v. The Commonwealth:

A power to make laws 'with respect to' a subject matter is a power to make laws which in reality and substance are laws upon the subject-matter. It is not enough that a law should refer to the subject-matter or apply to the subject- matter: for example, income tax laws apply to clergymen and to hotel-keepers as members of the public; but no one would describe an income-tax law as being, for that reason, a law with respect to clergymen or hotel- keepers. Building regulations apply to buildings erected for or by banks; but such regulations could not properly be described as laws with respect to banks or banking."

[Emphasis supplied)

Entry 43 List of I speaks of banking, insurance and financial corporations etc. but expressly excludes co-operative societies from its ambit. The constitutional intendment seems to be that the co-operative movement was to be left to the States to promote and legislate upon and the banking activities of co-operative societies were also not to be touched unless Parliament considered it imperative. The BR Act deals with the regulation of the banking business. There is no provision whatsoever relating to proceedings for recovery by any bank of its dues. Recovery was initially governed by the Code of Civil Procedure by way of civil suits and after the RDB Act came into force, the recovery of the dues of the banks and financial institutions was by filing applications to the Tribunal. The Tribunal has been established with the sole object to provide speedy remedy for recovery of debts of the banks and financial institutions since there has been considerable difficulties experienced therefore from normal remedy of Civil Court.

In R. C. Cooper, etc. v. Union of India [(1970) 1 SCC 248], this Court observed that power to legislate for setting up corporations to carry on banking and other business and to acquire, hold and dispose of property and to provide for administration of the corporations is conferred upon the Parliament by Entries 43, 44 and 45 of the Constitution. Therefore, the express exclusion of co-operative societies in Entry 43 of List I and the express inclusion of co-operative societies in Entry 32 of List II separately and apart from but along with corporations other than those specified in List I and universities, clearly indicated that the constitutional scheme was designed to treat co-operative societies as institutions distinct from corporations. Co-operative Societies, incorporation, regulation and winding up are State subjects in the ambit of Entry 32 of List II of Seventh Schedule to the Constitution of India. Co-operatives form a specie of genus 'corporation' and as such co-operative societies with objects not confined to one State read in with the Union as provided in Entry 44 of List I of the Seventh Schedule of the Constitution, MSCS Act, 2002 governs such multi-state co-operatives.

Hence, the co-operative banks performing functions for the public with a limited commercial function as opposed to corporate banks cannot be covered by Entry 45 of List I dealing with "banking". The subject of co-operative societies is not included in the Union List rather it covers under Entry 32 of List II of Seventh Schedule appended to the Constitution.

We have gone through the decision of this Court in The Life Insurance Corporation of India v. D. J. Bahadur & Ors. [AIR 1980 SC 2181] cited at bar. This Court held that the Industrial Disputes Act, 1947 is a special Statute devoted wholly to investigation and settlement of industrial disputes. Therefore, with reference to industrial disputes between employers and workmen, the Industrial Disputes Act is a special Statute and the Life Insurance Corporation Act (31 of 1956) does not speak at all with specific reference to workmen. The industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the Life Insurance Corporation Act. In ITC Ltd. v. Agricultural Produce Market Committee & Ors. [(2002) 9 SCC 232], this Court, as per majority opinion, held that the legislative power of Parliament in certain areas is paramount under the Constitution is not in dispute. What is in dispute is the limits of those areas as judicially defined. Broadly speaking Parliamentary paramountcy is provided for under Articles 246 and 254 of the Constitution. The first three clauses of Article 246 of the Constitution relate to the demarcation of legislative powers between the Parliament and the State Legislatures. Under clause (1), notwithstanding anything contained in clauses (2) and (3), Parliament has been given the exclusive power to make laws with respect to any of the matters enumerated in List I or the Union List in the Seventh Schedule. Clause (2) empowers the Parliament and State Legislatures subject to the power of Parliament under sub-clause (1), to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule described in the Constitution as the 'Concurrent List' notwithstanding anything contained in sub-clause (3). Under clause (3) the State Legislatures have been given exclusive powers to make laws in respect of matters enumerated in List II in the Seventh Schedule described as the 'State List' but subject to clauses (1) and (2). The three lists while enumerating in detail the legislative subjects carefully distribute the areas of legislative authority between Parliament (List I) and the State (List II). The supremacy of Parliament has been provided for by the non-obstante clause in Article 246 (1) and the words 'subject to' in Art.246 (2) and (3). Therefore, under Article 246 (1) if any of the Entries in the three Lists overlap, the Entry in List I will prevail. Additionally, some of the Entries in the State List have been made expressly subject to the power of Parliament to legislate either under List I or under List III. Entries in the Lists of the Seventh Schedule have been liberally interpreted, nevertheless Courts have been wary of upsetting this balance by a process of interpretation so as to deprive any Entry of its content and reduce it to 'useless lumber'. The use of the word 'exclusive' in Clause (3) denotes that within the legislative fields contained in List II, the State Legislatures exercise authority as plenary and ample as Parliament. In Associated Timber Industries & Ors. v. Central Bank of India & Anr. [(2000) 7 SCC 93], this Court observed: "Banking" being included in Union List in Entry 45 List I of Seventh Schedule cannot come within the purview of Assam Money Lenders Act, while "money-lending and money-lenders; relief of agricultural indebtedness" under the Assam Money Lenders Act 1934 comes under Entry 30 of List II State List of the Seventh Schedule.In State of Maharashtra v. Laljit Rajshi Shah & Ors. [(2000) 2 SCC 699], the question before this Court was whether a person defined as "officer" under Section 2(20) of the MCS Act, 1960 was a "public servant" within the meaning of Section 2 of the Prevention of Corruption Act, 1947 by virtue of the provisions of Section 161 of the MCS Act, 1960 read with Section 21 IPC and as such, could be proceeded against for offences under Section 5(1) read with Section 5(2) of the Prevention of Corruption Act, 1947. On analysis of the various provisions of the statutes and Articles 245, 246, 254(2) and Schedule Seven List II Entry 32 and List III Entry I, this Court held in para 6 as under:-

"..... The Maharashtra Cooperative Societies Act 1960 has been enacted by the State Legislature and their powers to make such legislation is derived from Entry 32 of List II of the Seventh Schedule to the Constitution.

The legislature no doubt in Section 161 has referred to the provisions of Section 21 of the Indian Penal Code but such reference would not make the officers concerned 'public servants' within the ambit of Section 21. The State Legislature had the powers to amend Section 21 of the Indian Penal Code, the same being referable to a legislation under Entry 1 of List III of the Seventh Schedule, subject to Article 254(2) of the Constitution as, otherwise, inclusion of the persons who are 'public servants' under Section 161 of the Co-operative Societies Act would be repugnant to the definition of 'public servant' under Section 21 of the Indian Penal Code. That not having been done, it is difficult to accept the contention of the learned Counsel, appearing for the State that by virtue of deeming definition in Section 161 of the Co-operative Societies Act by reference to Section 21 of the Indian Penal Code, the persons concerned could be prosecuted for the offences under the Indian Penal Code.

The Indian Penal Code and the Maharashtra Co-operative Societies Act are not Statutes in pari materia. The Cooperative Societies Act is a completely self-contained Statute with its own provisions and has created specific offences quite different from the offences in the Indian Penal Code. Both Statutes have different objects and created offences with separate ingredients. They cannot thus be taken to be Statutes in pari materia, so as to form one system. This being the position, even though the Legislatures had incorporated the provisions of Section 21 of the Indian Penal Code into the Co-operative Societies Act, in order to define a 'public servant' but those 'public servants' cannot be prosecuted for having committed the offence under the Indian Penal Code. It is a well-known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction, it is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by which it is created. A legal fiction in terms enacted for the purposes of one Act is normally restricted to that Act and cannot be extended to cover another Act. When the State Legislatures make the Registrar, a person exercising the power of the Registrar, a person authorised to audit the accounts of a society under Section 81 or a person to hold an inquiry under Section 83 or to make an inspection under Section 84 and a person appointed as an Administrator under Section 78 or as a Liquidator under Section 103 shall be deemed to be 'public servants' within the meaning of Section 21 of the Indian Penal Code. Obviously, they would not otherwise come within the ambit of Section 21, the legislative intent is clear that a specific category of officers while exercising powers under specific sections have by legal fiction become 'public servant' and it Is only for the purposes of the Cooperative Societies Act. That by itself does not make those persons 'public servants' under the Indian Penal Code, so as to be prosecuted for having committed the offence under the Penal Code. When a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something, the Act of legislature requires him to be treated as if obviously for the purposes of the said Act and not otherwise."

The case reported in Union of India v. Delhi High Court Bar Association [(2002) 4 SCC 275] relied upon on behalf of the respondents in support of the judgments and orders of the High Court of Bombay and High Court of Andhra Pradesh, does not consider the issue of co-operative banks'

adjudication and recovery provisions under Entry 32 of List II. The Court was only considering Entry 45 List I vis-a-vis Entry IIA List III 'administration of justice'. As such, the decision of this case is of no assistance or of help to the proposition of law involved in the present cases.

None of the contentions of the learned counsel for the respondents supporting the judgments and orders of the High Courts impugned before this Court on the question of interpretation clause as well as the question of constitutional clause formulated hereinabove can be sustained. For the reasons stated above and adopting pervasive and meaningful interpretation of the provisions of the relevant Statutes and Entries 43, 44 and 45 of List I and Entry 32 of List II of the Seventh Schedule of the Constitution, we answer the Reference as under:-

"Co-operative banks" established under the Maharashtra Co-operative Societies Act, 1960 [MCS Act, 1960]; the Andhra Pradesh Co-operative Societies Act, 1964 [APCS Act, 1964]; and the Multi-State Co-operative Societies Act, 2002 [MSCS Act, 2002] transacting the business of banking, do not fall within the meaning of "banking company" as defined in Section 5 (c) of the Banking Regulation Act, 1949 [BR Act]. Therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [RDB Act] by invoking the Doctrine of Incorporation are not applicable to the recovery of dues by the co-operatives from their members. The field of co-operative societies cannot be said to have been covered by the Central Legislation by reference to Entry 45, List I of the Seventh Schedule of the Constitution. Co- operative Banks constituted under the Co-operative Societies Acts enacted by the respective States would be covered by co- operative societies by Entry 32 of List II of Seventh Schedule of the Constitution of India.

The Registry of this Court shall place these matters before Hon'ble the Chief Justice of India for constitution of an appropriate Bench for early disposal of these cases.