2016 eGLR_HC 10006139,2016 (3) GLH NOC 1

Before the Hon'ble MR JAYANT PATEL, JUSTICE the Hon'ble MR. RAJESH H. SHUKLA, JUSTICE

NEEL OIL INDUSTRIES PARTNERSHIP FIRM AND ORS. Vs. UNION OF INDIA AND ANR.

SPECIAL CIVIL APPLICATION No: 1012 of 2014 , Decided On: 25/06/2015

(A) Constitution of India,1950 - Remedies -Validity of remedy -Held, Remedies available in various acts and forums - Under circumstances, remedy provision is a legal as per the parliament provisions - Directions given in that regards - Appeal disposed off.

Referred to:
1. Shri Dhakdi Group Cooperative Cotton?seed and Ors. Vs. Union of India & Ors. 2013(3) GLR 2337
2. Delhi Cloth and General Mills Co. Ltd. v. Union of India and Others AIR 1983 SC, 937
3. Kheralu Nagarik Sahakari Bank Limited vs. State of Gujarat 1998 (2) GLR, 1517
4. Maradia Chemicals Ltd. vs. Union of India and Ors. 2004 (4) SCC 311
5. Greater Bombay Coop. Bank Ltd. Vs. United Yarn Tex (P) Ltd. and Ors. 2007 (6) SCC 236
6. APEX ELECTRICALS vs. ICICI BANK LTD. 2003(2) GLR 1785
7. KHAJA INDUSTRIES vs. THE STATE OF MAHARASHTRA & ANR AIR 2007 BOM 722
8. State of Tamil Nadu Vs. State of Kerala, AIR 2014 SC, 2407
9. S. T. Sadiq v. State of Kerala & Ors. (2015) 4 SCC 400

SCA No.1012/14: MR SHAKTI S JADEJA, ADVOCATE for the Petitioner(s)No.15 MR SP MAJMUDAR, ADVOCATE for the Petitioner(s) No. 1 5 MR PARTH H BHATT, CENTRAL GOVT. COUNSEL for MR DEVANG VYAS, ASST. SOLICITOR GENERAL for the Respondent(s) No. 1 MR GM JOSHI, ADVOCATE for the Respondent(s) No. 2 SCA No.16125/13: MR VISHWAS K SHAH, ADVOCATE for Petitioners No.12 MR BOMI H. SETHNA, ADVOCATE for Respondent No.2 MR PARTH H BHATT, CENTRAL GOVT. COUNSEL for Union of India SCA No.1330/13: MR NV GANDHI, ADVOCATE for Petitioner No.1 MR PARTH H BHATT, CENTRAL GOVT. COUNSEL for MR DEVANG VYAS, ASST.SOLICITOR GENERAL for Respondent No.1 MR UMESH A TRIVEDI, ADVOCATE for Respondent No.2 SCA No. 18678/13: MR VISHWAS K SHAH, ADVOCATE with MR VILAV K.BHATIA, ADVOCATE for Petitioners No.12 MR PARTH H BHATT, CENTRAL GOVT. COUNSEL for MR DEVANG VYAS, ASST.SOLICITOR GENERAL for Respondent No.1 MR VISHWAS S. DAVE, ADVOCATE for Respondent No.2 SCA Nos.8231/14 & 8234/14: MR NIRAD D BUCH, ADVOCATE for NANAVATI ADVOCATES of Petitioners No.13 MR PARTH H BHATT, CENTRAL GOVT. COUNSEL for MR DEVANG VYAS, ASST.SOLICITOR GENERAL for Respondent No.1 MR SN SOPARKAR, SENIOR ADVOCATE with MR AMAR BHATT, ADVOCATE for Respondent No.3 MR NANDISH CHUDGAR, ADVOCATE with MR KRUTIK PARIKH, ADVOCATE for NANAVATI ASSOCIATES for Respondent No.2 MR RAKESH R. PATEL, AGP for Respondent No.4 SCA No.2931/14: MR VISHWAS K SHAH, ADVOCATE for Petitioner No.1 MR NANDISH CHUDGAR, ADVOCATE with MR KRUTIK PARIKH, ADVOCATE for

NANAVATI ASSOCIATES for Respondent No.2 MR PARTH H BHATT, CENTRAL GOVT. COUNSEL for Union of India SCA No.9107/14: MR MASOOM K SHAH, ADVOCATE with MR URVESH GOR, ADVOCATE of Petitioners No.13 MR PARTH H BHATT, CENTRAL GOVT. COUNSEL for MR DEVANG VYAS, ASST.SOLICITOR GENERAL for Respondent No.1 MR NANDISH CHUDGAR, ADVOCATE with MR KRUTIK PARIKH, ADVOCATE for NANAVATI ASSOCIATES for Respondent No.2 MR RAKESH R. PATEL, AGP for Respondent No.45 SCA No.9575/14: MR MASOOM K SHAH, ADVOCATE with MR URVESH GOR, ADVOCATE for Petitioner No.1 MR PARTH H BHATT, CENTRAL GOVT. COUNSEL for UNION OF INDIA MR RAKESH R. PATEL, AGP for Respondents No.35 SCA No.9909/14: MR VISHWAS K SHAH, ADVOCATE for Petitioners No.111 MR GM JOSHI, ADVOCATE for Respondent No.2 MR PARTH H BHATT, CENTRAL GOVT. COUNSEL for UNION OF INDIA MR RAKESH R. PATEL, AGP for Respondents No.34

MR. JAYANT PATEL, J. 1. As in all the matters, common questions arise for consideration and there are more or less common challenges to be considered, they are being considered simultaneously.

2. In SCA No.1012/14, Mr. Majmudar, at the outset submitted that he is not pressing for the relief in para 33(A) for challenging the vires of the Act and therefore, the said aspect may not be required to be considered and he has restricted his case to the relief prayed for in para 33(B), which relates to challenging the amendment No.1 of 2013 brought by the legislature in section 2(c) after subclause (iv) inserting subclause (iva) "a MultiState cooperative bank; or" of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "Securitisation Act") as ultra vires to the Constitution and ab initio null and void. The other prayers made in the petition are based on the principal prayer for challenging the constitutional validity of the Amendment No.1 of 2013.

3. SCA No.16125/13 has been preferred seeking very relief for challenging the constitutional validity of the amendment and the other reliefs prayed are by way of consequential reliefs based on the principal challenge to the constitutional validity of the aforesaid amendment.

4. In SCA No.1330/13, the challenge is to the notification dated 28.01.2003 of the Central Government whereby the cooperative banks were included in exercise of the power under section 2(c)(v) of the Securitisation Act by the Central Government. In the said petition, we may record that the learned counsel appearing for respondent no.2 Bank declared before the Court that the notification challenged by the petitioner is of 2003 and the action under the Securitisation Act was taken by the Bank based on the said notification and he fairly declared that in view of the decision of this Court in the case of Administrator, Shri Dhakdi Group Cooperative Cottonseed and Ors. Vs. Union of India & Ors. reported at 2013(3) GLR 2337, the respondent no.2 Bank will not pursue the

proceedings taken under the Securitisation Act prior to the amendment made by Act No.1 of 2013. He submitted that by amendment in question, which is challenged in other connected petition, multi-State Cooperative Banks is included. Therefore, subject to the decision which may be taken by this Court for constitutional validity of the amending act, such decision would also be binding to the respondent no.2 Bank. Ultimately, the appropriate order may be passed at the conclusion of the present matters.

5. SCA No.18678/13 has been preferred for challenging the very provisions of section 2(1)(c) of (iva) of the Securitisation Act which has been brought about by the amending act. The other relief prayed are consequential relief based thereon.

6. SCA Nos.8231/14 and 8234/14 have been preferred for challenging the constitutional validity of section 2(1)(c) of the Securitisation Act and section 2(d)(vi) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993(hereinafter referred to as "RDDB Act") being ultra vires to the constitution. It may be recorded that on the prayer made for challenging the guidelines dated 02.02.2005 issued by RBI for merger of cooperative banks, the learned counsel submitted that after the decision of this Court in the present group of matters on the constitutional validity of the aforesaid provisions of Securitisation Act as well as RDDB Act, if the petitioners are relegated to prefer separate petition for challenging RBI guidelines and for challenging the decision of merger, the petitioners would have no objection, but it was submitted that the protection which has been granted to the petitioners pending the petition be continued for some time so as to enable the petitioners to prefer separate petition.

7. SCA No.2931/14 has been preferred for challenging the very provisions of section 2(1)(c)(iva) of the Securitisation Act and section 2(d)(vi) of the RDDB Act. The other reliefs prayed are consequential reliefs based on the aforesaid principal relief.

8. In SCA Nos.9107/14, 9575/14 and 9909/14, the very provisions of Securitisation Act and RDDB Act are challenged. The other reliefs are consequential relief prayed in the petition.

9. We have heard learned advocates Mr.SP Majmudar, Mr.Vishwas K Shah with Mr.Vilav K.Bhatia, Mr. N.V.Gandhi, Mr.N.D.Buch for Nanavati Advocates, Mr. Masoom K Shah with Mr. Urvesh Gor for the petitioners in the concerned matters and we have heard learned advocates Mr. GM Joshi, Mr. Bomi Sethna, Mr. S.N. Soparkar, learned Senior Counsel with Mr. Amar Bhatt, Mr. Umesh A Trivedi, Mr. Vishwas S. Dave, Mr. Nandish Chudgar with Mr. Krutik Parikh for Nanavati Associates, Mr.Rakesh Patel, AGP for the respondents in the concerned matters. Mr. Parth Bhatt, Central Govt. Counsel for Mr. Devang Vyas, Assistant Solicitor General appears for Union of India in all the matters.

10. We have heard the learned Counsel for both the sides for final disposal of the petitions.

1. We may record that all petitions are preferred by the respective petitioners for challenging the constitutional validity of the aforesaid both the provisions in capacity as the borrower of the concerned respondent Bank or the guarantor therein, as the case may be. As the said both the aspects are not of much relevance for the consideration of the present group of matters and more particularly for examining the constitutional validity of the respective statute, we do not find that much discussion may be required on the said aspects.

2. In order to appreciate the contention properly, we may reproduce the respective statutory provision.

Section 2(c) of the Securitisation Act reads as under:

"2(c) "bank" means
(i) a banking company; or
(ii) a corresponding new bank; or
(iii) the State Bank of India; or
(iv) a subsidiary bank; or
(iva) a multiState cooperative bank; or]
(v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;

It may be recorded that the bold portion of the aforesaid provision has been inserted by the Amending Act.

Section 2(d) of the RDDB Act reads as under:

(d) "banks" means

(i) a banking company;
(ii) a corresponding new bank;
(iii) State Bank of India;
(iv) a subsidiary bank; or
(v) a Regional Rural Bank;
(vi) a multiState cooperative bank;

The above referred bold letter portion is inserted by the amending act.

BACKGROUND

3. The RDDB Act was enacted in the year 1993 in order to provide for establishment of tribunals for expeditious adjudication and regulation of debts due to banks and financial institutions. Prior to the enactment of RDDB Act, if the banks and the financial institutions had to recover the money from its borrowers, it had to resort to the proceedings of civil suits in the appropriate civil court. However, by the RDDB Act, a separate mechanism was provided conferring the exclusive jurisdiction with the Tribunal established as per the said Act. Apparently, the purpose was to enable speedy and fast recovery of the money recoverable by the banks and the financial institutions. Prior to the amending act, section 2(d) of the RDDB Act provided that the Bank means - (i) A banking company (ii) A corresponding new bank (iii) State Bank of India (iv) A subsidiary bank or (v) A regional rural bank. There was no express inclusion of any cooperative bank, much less any multiState cooperative bank. Section 2(e) of the RDDB Act provided that the "banking company" shall have the same meaning as assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 (hereinafter referred to as the "BR Act").

4. After the aforesaid RDDB Act was brought into force, it was realised that with a view to enable the banks and financial institutions for the recovery of loss and reducing the level of non performing assets, additional measures were required to bee introduced and it is with the said broad purpose, with a view to speed up the recoveries of the banks and financial institutions outstanding by realisation of security interest without intervention of the Court and in order to provide legal framework for securitisation of the assets, Securitisation Act was enacted by the Parliament.

5. Initially, section 2(1)(c) provided for the definition of the word Bank under the Securitisation Act which included (i) a banking company (ii) a corresponding new bank (iii) the State Bank of India (iv) a subsidiary bank (v) such other bank which the Central Government may by notification specify for the said purpose. The relevant aspect is that by express provision of the statute, multi-State cooperative bank was not included. However, by notification of the Central Government dated 28.01.2003, the cooperative banks were specified by the Central Government in exercise of the power under section 2(c)(v) and further, the meaning given was as defined under clause (cci) of section 5 of the BR Act as bank. As in the year 2003, by virtue of the Central Government notification, cooperative banks were also included and the other borrowers of the nationalised bank had filed large number of petitions before this Court being Special Civil Application No.3401/03 and allied matters. In the case of Apex Electricals Ltd. & Ors. vs. ICICI Bank Ltd., incidentally, those group of petitions came to be decided by one of us (Jayant Patel, J.) as per the decision reported at 2003(2) GLH 740. In the said decision, one of the challenge was the validity of the notification dated 28.01.2003 issued by the Central Government contending that the same was ultra vires to the powers of the Constitution so far as cooperative banks are concerned as they would fall under Entry No.32 of the State List and not under Entry 43 or Entry 45 of the Central List. This Court in the said decision, at paragraphs 15 to 18, observed thus

"15. On behalf of the petitioners challenging the action of the Cooperative Banks, it was contended that the notification dated 2812003 issued by Ministry of Finance, Government of India in exercise of power under Item V of Clause C of subsection 1 of Section 2 of the Act of specifying Cooperative Bank as the Bank under the Act is ultra vires the powers of the Constitution in as much as, so far as the Cooperative Banks are concerned it would fall under Entry 32 of the State List and the same would not fall either under Entry 43 or under Entry 45 of the Central List.

16. On the other hand, the learned Counsel appearing for the Cooperative Banks submitted, inter alia, that the Cooperative Banks are even otherwise covered under the Banking Regulations Act and, therefore, Cooperative Banks, even in absence of such notification, can invoke the provisions of the Act since they are covered as the Banks under the provisions of Banking Regulations Act. It was also submitted on behalf of the Cooperative Banks that the matter pertaining to transaction of banking includes the recovery of loans and, therefore, when the procedure is provided for recovery of loans or recovery of the bank dues, it is not a matter under Entry 32, but it is a matter under Entry 45.

The scrutiny of the aforesaid contention shows that the Act is enacted with the object, inter alia, for enforcement of the security interest of the Bank or Financial Institution. In the case of "Delhi Cloth and General Mills Co. Ltd. v. Union of India and Others", reported in AIR 1983 SC, 937, the Apex Court has observed as under:

"When a law is impugned on the ground that it is ultra vires the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. To resolve the controversy if it becomes necessary to ascertain to which entry in the three lists, the legislation is referable, the Court has evolved the doctrine of pith and substance. If in pith and substance, the legislation falls within one entry or the other but some portion of the subjectmatter of the legislation incidentally trenches upon and might enter a field under another list, then it must held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence."

17. The statement of the objects of the Act as referred to hereinabove further shows that the Act is enacted with a view to enable the Banks and Financial Institutions to realise longterm assets, manage problems of liquidity, asset liability mismatches and recovery by exercising powers to take possession of securities, sell them and reduce non performing assets by adopting measures for recovery or reconstruction. In this regard, if the provisions of the Banking Regulations Act (hereinafter referred to as "BRA") are examined, by virtue of Section 56 of the Act, certain provisions of the BRA are made applicable to Cooperative Societies dealing in banking business. Section 18 of BRA which is made applicable for Cooperative Banks provides for maintenance of cash reserves, Section 20 applicable for Cooperative Bank provides for restrictions on loans and advances by Cooperative Bank, Section

24 provides for maintenance of cash balance and other securities, Section 35 provides for inspection by the Reserve Bank of India(RBI), Section 35A provides for binding effect of the directives of RBI. Therefore, Section 56 of BRA, providing that with certain modifications, the provisions of BRA is applicable to the Cooperative Banks, in my view, goes to show that in substance the provisions of PartII of the BRA relating to business of the Banking Companies are made applicable with modifications to all Cooperative Banks. It can hardly be legitimately disputed that method provided for recovery of loan by realisation of secured assets and thereby to provide mode for reduction of nonperforming assets by the Cooperative Bank would not be a matter pertaining to Banking business, merely because a bank is a Cooperative Bank. The law pertaining to regulating banking business would, by natural construction, include the method and manner of recovery of loans and realisation of assets and also the non-performing assets and hence it would not be sufficient to construe that Parliament has no power to legislate upon the method and manner of Regularisation and Enforcement of Security Interest which also includes recovery by the Cooperative Banks and it would fall under Entry 32 of State list. As such if a matter pertains to incorporation, regulations and winding up of Cooperative Societies, it would fall under Entry 32 of the State List, but the law providing the remedy of realisation of secured assets by the Cooperative Bank can be said to be a subject touching to banking. It is well settled that the entry should be given the widest possible interpretation and in my view, the banking would include various activities of the bank namely receiving monies from the depositors, providing for loan, maintaining of the cash reserves, assets, recovery of loans, realisation of secured assets, reduction of nonperforming assets by realisation of monies etc., are various subjects, which can be said as touching to Banking provided under Entry 45 of Central list.

An attempt was made to submit that if the law pertaining for recovery of the Cooperative Bank dues are treated as under Entry 45, then in that case, the validity of the provisions of Section 96 of the Gujarat Cooperative Societies Act can be questioned. I am not required to examine the said aspect as the same is not issue before this Court to test the validity of Section 96 of the Gujarat Cooperative Societies Act, but the pertinent aspect is that as per the provisions of Section 37 of the Act, the provisions of the Act and the Rules made thereunder are in addition and not in derogation of any other law for time being in force and, therefore, even otherwise also as such there is no conflict. Moreover, Section 96 of the Act provides for resolving disputes between society and its members and such societies may not be Coop Banks also.

18. Much reliance was placed on behalf of the petitioners upon the judgement of the Division Bench of this Court in the case of "Kheralu Nagarik Sahakari Bank Limited vs. State of Gujarat", reported in 1998 (2) GLR, 1517 to contend that such item squarely falls under Entry 32 of the State List and would not fall under Entry 45 of the Central List. In the case "Kheralu Nagarik Sahakari Bank Limited"(supra), the Division Bench of this Court was considering whether the State legislature can provide for making provisions for seeking permission of the Government for making certain investment by a Cooperative Bank. The Court interpreted Entry 43 of List I and observed that Cooperative Societies are excluded from Entry 43 of Central list and, therefore, it would fall under Entry 32 of State list. In my view, the decision in the case of "Kheralu Nagarik Sahakari Bank"(supra) cannot be read as holding that the matter pertaining to banking business of a Cooperative Bank would not fall under Entry 45 of Central list and, therefore, the said judgement is of no help to the petitioners. In exercise of the power under Section 2(1)(c)(v) of

the Act, the Central Government has included by the impugned notification, the Cooperative Banks in the definition of Bank and the same, in my view, is within the scope and ambit of the legislative competence of Parliament and cannot be said to be ultra vires the powers under the Constitution of India. The notification is subordinate legislation and the purpose of the enactment of the main Act itself is for providing procedure for regulation and realisation of security interest in secured assets by the banks and when the Central Government in its legislative wisdom has found it proper to include Cooperative Banks also within the definition of the word "Bank" for attaining the object in the field of Cooperative Banks, it cannot be said that such piece is of subordinate legislation as per the impugned notification is beyond the scope and ambit of the Act itself and, therefore, challenge to the legality and validity of the notification dated 281-2003 on the ground that it is ultra vires to powers of Parliament or Central Government, fails and hence rejected."

6. It may also be recorded that pending the consideration of the aforesaid matters before this Court, the constitutional validity of the Securitisation Act as a whole was also challenged before the Apex Court by substantive petition and there were also other petitions preferred before the other high courts which were subsequently transferred to the Apex Court. The Apex Court in its decision in the case of Maradia Chemicals Ltd. vs. Union of India and Ors. reported at 2004 (4) SCC 311, after considering the various provisions of the Act, upheld the validity of the Securitisation Act save and except the provisions of section 17 of the Act. We may for the ready reference, extract the ultimate conclusion recorded by the Apex Court in the above referred decision at paragraphs 80 to 83, which reads as under:

"80.Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows :

1. Under subsection (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under subsection (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil Court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the Court.

81. In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debt Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of economy of the country and welfare of the people in general which would subserve the public interest.

82. We, therefore, subject to what is provided in paragraph 80 above, uphold the validity of the Act and its provisions except that of subsection (2) of Section 17 of the Act, which is declared ultra vires of Article 14 of the Constitution of India.

83. Before we part with the case, we would like to observe that where a secured creditor has taken action under Section 13(4) of the Act, in such cases it would be open to borrowers to file appeals under Section 17 of the Act within the limitation as prescribed therefor, to be counted with effect from today."

16. It appears that thereafter, in the State of Maharashtra, the question arose for availability of remedy to the cooperative banks and multi state cooperative bank under RDDB Act. The High Court of Bombay took the view that such remedy is available to the cooperative banks and multi state cooperative banks. The matters were further carried before the Apex Court and the questions were also referred to the Larger Bench of the Apex Court and ultimately, the Apex Court in its decision in the case of Greater Bombay Coop. Bank Ltd. Vs. United Yarn Tex (P) Ltd. and Ors. reported at 2007 (6) SCC 236, answered the question at paragraphs 97 and 98 as under:

"97. 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:

"Cooperative banks" established under the Maharashtra Cooperative Societies Act, 1960 [MCS Act, 1960]; the Andhra Pradesh Cooperative Societies Act, 1964 [APCS Act, 1964]; and the Multi-State Cooperative 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.

98.The field of cooperative 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. Cooperative Banks constituted under the Cooperative Societies Acts enacted by the respective States would be covered by cooperative societies by Entry 32 of List II of Seventh Schedule of the Constitution of India."

17. The aforesaid shows that the Apex Court had taken the view that the cooperative banks established under the Cooperative Societies Act or Multi State Cooperative Societies Act transacting the business of banking would not fall within the meaning of the banking company as defined under section 5(c) of the BR Act and therefore, the provisions of RDDB Act would be unavailable by invoking the doctrine of Incorporation for recovery of the dues of the cooperative banks from its members. The Apex Court also held that the cooperative societies cannot be said to be covered by central legislation under Entry 45, List I of the Seventh Schedule, but the cooperative bank constituted under the State Cooperative Societies Act enacted by the respective States would be covered by Entry 32 of List II of the seventh schedule of the Constitution. In view of the aforesaid decision of the Apex Court, the remedy of RDDB Act to the cooperative banks may be State Cooperative Banks or multi State cooperative banks were unavailable for invoking the jurisdiction of the Tribunal under RDDB Act for recovery of its dues from its members.

18. It appears that thereafter, in the case of Administrator, Shri Dhakdi Group Cooperative CottonSeed & Ors (supra), once against the validity of the above referred notification dated 28.01.2003 issued by the Central Government for including Cooperative Bank within the purview of the Securitisation Act came to be challenged on the ground that the same is ultra vires to the powers of the Central Government. The Division Bench of this Court in the decision in the case of Administrator, Shri Dhakdi Group Coop. Cotton Seed & Ors.(Supra), at paragraph 20.6 to 21, observed thus

"20.6 In the case of KHERALU NAGARIK SAHAKARI BANK TD. v. STATE OF GUJARAT reported in 1998 (2) GLR 1517, the question involved was with regard to constitutional validity of

Section 71 of the Gujarat Cooperative Societies Act. It was contended that Section 71 could not, in any manner, control the affairs of the Society engaged in banking business, and on account of the amendment brought about by Banking Laws (Applicable to Cooperative Societies) Act, Central Act No. 23 of 1965, the provisions contained in the Act became ultra vires the power of the State legislature. The Division Bench held that the State Legislature has powers to legislate on all matters concerning cooperative societies, and such cooperative societies falling under Entry 32 of List II may even be engaged in the business of banking. Thus, the Division Bench held that by virtue of amendment of 1965, Section 71 did not become ultra vires by application of Article 245 of the Constitution. We find that the view of the Division Bench is quite in conformity with the decision in the case of Greater Bombay Cooperative Bank Ltd. (supra) and supports the petitioners in these cases.

20.7 In the case of APEX ELECTRICALS vs. ICICI BANK LTD. reported in 2003(2) GLR 1785, the learned Single Judge of this Court had no occasion to consider the effect of the decision in the case of Greater Bombay Cooperative Bank Ltd. [supra] as at that point of time, the said decision was not in existence and, in our opinion, after the decision of the Supreme Court in the case of Greater Bombay Cooperative Bank Ltd. [supra], the said decision is not a good law.

20.8 In the case of SHAIKH MEHMOOD SHAILH BIBHAN vs. THE AUTHORIZED OFFICER, NARAYAN G. MENDON THE MOGAVEERA COOP. BANK LTD. AND ORS reported in MANU/MH/0047/2011, a Division Bench of the Bombay High Court was dealing with the similar question and according to the said Division Bench, in view of the earlier decision of the said Court in the case of KHAJA INDUSTRIES vs. THE STATE OF MAHARASHTRA & ANR reported in AIR 2007 BOM 722, the said point was no longer res integra. Apart from the aforesaid, it was held by the said Division Bench that there was a crucial difference in the language of the Securitization Act as compared to the provisions of the RDBI Act. In the RDBI Act, the definition of the expression bank in section 2(d) extends to five categories namely, a banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, and, a Regional Rural Bank. According to the said Division Bench, when the Parliament enacted the Securitization Act, 2002, the expression bank was defined in Section 2 (c) to cover in clauses (i) to (iv), the first four categories as referred to in section 2(d) of the RDBI Act. However, according to the said Division Bench, sub clause (v) of clause (c) of section 2 of Securitization Act extends the definition to such other bank which the Central Government may by notification specify for the purpose of the Act. The Central Government has issued a Notification dated 28th January 2003 expressly bringing in within the purview of the expression bank, a Cooperative Bank as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949. The provisions of the Securitization Act, according to the said Division Bench, provides an additional remedy and hence, the Cooperative Banks have been specifically brought within the purview of Securitization Act by virtue of definition which was introduced in section 2(c) (v) and in terms of the Notification of the Central Government dated 28th January 2003.

20.8.1 It appears that the Division Bench, while arriving at such a conclusion, did not refer to paragraphs 98 and 99 of the judgment of the Supreme Court in the case of Greater Bombay Cooperative Bank Ltd. [supra] which we have relied upon. With great respect to the Division Bench of the Bombay High Court, we are unable to subscribe to the view taken therein as by

virtue of power of delegation conferred upon the Central Government under the Securitization Act, a statute enacted in exercise of power conferred upon the Parliament under List I of seventh schedule relating to banking, the subject of a State Legislature cannot be encroached upon.

21. As regards the other question raised by the learned advocates for the respondents that these petitions should be dismissed solely on the ground of delay, we are of the opinion that after having held that by issuing the impugned notification, the delegated authority has encroached upon the field of legislation allotted to the State Legislature, the question of delay becomes insignificant. It is a wellsettled law that by mere delay or acquiescence, a right even conferred by a statute based on public policy cannot be waived. In the cases before us, we are concerned with the illegal action of the Central Government which is ultra vires the Constitution. Thus, delay cannot stand in the way of the petitioners."

19. The aforesaid shows that the Division Bench of this Court in the above referred decision found that in view of the later decision of the Apex Court in the case of Greater Bombay Cooperative Bank Ltd. (supra), the earlier decision of this Court in the case of Apex Electricals (supra) was no more a good law and it was also found that when the forum of RDDB Act was unavailable to the cooperative Banks, they cannot be included under the Securitisation Act. It was also found by this Court in the above referred decision that so far as cooperative societies are concerned, it would fall under Entry 32 of List II and therefore, the action could be said as ultra vires. But one of the relevant aspect which will be considered and dealt with hereinafter is that the discussion in the said decision including the observation therein was relating to cooperative banks was for the banks under State Cooperative Societies Act which itself is falling under Entry 32 of List II. The Division Bench in the said decision, had no occasion to examine the aspect of cooperative Bank formed under MultiState Cooperative Societies Act which itself is falling under Entry 44 of the Central List or not.

20. At this stage, useful reference can be made to the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Ltd (supra), more particularly the observations made at paragraph 89 of the aforesaid decision, the relevant of which reads as under:

"....Cooperatives form a specie of genus "corporation" and as such cooperative societies with objects not confined to one State are read in with the Union List as provided in Entry 44 of List I of the Seventh Schedule of the Constitution; the MSCS Act, 2002 governs such multiState cooperatives."

21.The learned Counsel, appearing for the petitioners in all the matters, mainly raised two-fold contentions; one was that the subject of Cooperative Society would not fall in Entry No.45 of the Union List, nor would fall in Entry No.43 of the Union List and would only fall in Entry No.32 of the State List and, therefore, it can be said that the Parliament, while enacting the Securitisation Act as well as RDDB Act, has exceeded the power and, therefore, the Amending Act could be

said as ultra vires the Constitution. The second limb of the argument was that the remedy of RDDB Act to Cooperative Banks is conjoint with the remedy of Securitisation Act to Financial Institutions and Banks. Once it is found that the remedy under RDDB Act, as held by the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra) is unavailable to the Cooperative Banks, may be State Cooperative Banks or Multi State Cooperative Banks, the remedy under Securitisation Act inserted by the Amending Act would be meaningless and it would run counter to the inbuilt mechanism of the Cooperative Societies as well as RDDB Act.

22.The learned Counsel appearing for the petitioners also relied upon the decision of this Court in the case of Administrator, Shri Dhakdi Group Coop. CottonSeed & Ors.(Supra).

23.Whereas, the learned Counsel appearing for the respondent Banks, including RBI, contended that the operational area of RDDB Act and Securitisation Act are different, though the appellate powers under Section 17 of the Securitisation Act are conferred with the Tribunal constituted under RDDB Act. It is submitted that by virtue of Section 37 of the Securitisation Act, remedy is in addition to the normal remedy and not in derogation of the remedy already available. It is also submitted that the remedy provided by the Amending Act to Multi State Cooperative Banks are for supplementing the remedy under Securitisation Act as well as for the regular remedy to be made available to them under RDDB Act. The learned Counsel submitted that as observed by the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra) Multi State Cooperative Societies are governed by Entry No.44 of the Union List and not under Entry No.32 of the State List. It was submitted that once it is found even by the Apex Court that the Multi State Cooperative Banks would fall in Entry No.44 of the Central List, it would not lie in the mouth of the petitioners to contend that it would fall under entry 32. Further, in any case, Entry No.32 is for the State Cooperative Societies within the domain of State Legislature, whereas Entry No.44 is the subject of Parliament and, therefore, it cannot be said that the power exercised by the Parliament is beyond its competence as sought to be canvassed by the petitioners. It is, therefore, submitted that there is no substance in both the contentions raised on behalf of the petitioners.

24.As the strong reliance has been placed by the learned Counsel for the petitioners on the decision of the Apex Court in the case of the Greater Bombay Cooperative Bank Limited (Supra) and the decision of this Court in the case of Administrator, Shri Dhakdi Group Coop. Cotton Seed & Ors. (Supra), we would find it appropriate to consider both the decisions before we consider the further contentions raised on behalf of the petitioners.

25.As we have already referred to the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra), we may not reproduce once again the portion, which is already reproduced earlier by way of concluding observations of the Apex Court. However, the examination of the said decision in light of the contention raised goes to show that the contention is on a misconceived premise. In the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra), the subject matter was as to whether by doctrine of incorporation in the proceedings before the Tribunal under the RDDB Act could be invoked by the State Cooperative Societies or Multi State Cooperative Societies or not. As the doctrine of

incorporation was also considered by the High Court of Bombay against which appeal came to be decided by the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra), the said aspect was under consideration before the Apex Court. The question before the Apex Court in the said decision was if any institution or a society was not covered by the definition of the Banking Company under BR Act, whether by the principles of doctrine of incorporation, remedy is made available to the State Cooperative Bank or Multi State Cooperative Bank or not. The Apex Court after examining the provisions of Section 5(c) of BR Act and also RDDB Act has taken the view that so far as cooperative banks are concerned, they were separately defined under BR Act under Section 56(c) and Section 56 (cci) of BR Act and there being no express provision made under Section 5(c) of BR Act to include cooperative bank, the view was taken by the Apex Court in the said decision that the Cooperative Banks cannot be said to be included under Section 5(c) defining Banking Company under BR Act by applying the doctrine of incorporation.

26.At this stage, we may make useful reference to the observations made by the Apex Court at paragraph 73, which reads as under:

"73. 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 cooperative 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). "Cooperative bank" was separately defined by the newly inserted clause (cci) and "primary cooperative 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 cooperative bank as defined in Section 5 (cci) and primary cooperative 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 cooperative banks seems to be that cooperative banks have comprehensive, selfcontained 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."

27.The aforesaid shows that it is on account of the aforesaid legal position, as observed by the Apex Court, the ultimate view was expressed by the Apex Court at paragraph 97, which has already been reproduced herein above in earlier paragraph and conclusion was recorded that by invoking the doctrine of incorporation, the proceedings under RDDB Act would be unavailable to the State Cooperative Banks as well as Multi State Cooperative Banks.

28.Apart from the above, in the very decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra), the Apex Court did observe that the Cooperative Societies Act enacted by the State would be covered by the Cooperative Societies under Entry No.32 of the ListI, and it cannot be said that the Cooperative Societies are covered by Entry No.45 of ListI. Such observations are to be considered and read for the purpose of State Cooperative Societies enacted by the respective States and it cannot be read to apply to Multi State Cooperative Societies, which are established under the Multi State Cooperative Societies Act enacted by the Parliament itself. In any case, as recorded earlier in paragraph 89, the Apex Court in the very decision did specifically observe for including of the Multi State Cooperative Societies Act under Entry No.44 of the Central List. When the operational area of Multi State Cooperative Societies Act is not confined to one State and it has been held by the Apex Court that the same would fall under Entry No.44 of ListI, it cannot be said that Multi State Cooperative Societies Act would fall under Entry 32 of the State List. We may record that in the present case as the Amending Act is only restricted to Multi State Cooperative Societies or Multi State Cooperative Banks established under Multi State Cooperative Act, the aspect as to whether the cooperative banks constituted under Cooperative Societies Act enacted by the respective States, would be covered under Entry No.32 or not would be of no much consequence for the purpose of considering the controversy involved and the contention raised on behalf of the petitioners. Hence, it cannot be said that in the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra), the Apex Court had ruled that all Cooperative Banks, be as State or Multi State Cooperative Banks, would fall under Entry No.32 of the State List. On the contrary, if the observations made at paragraph 89 in the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra) it is clear and the reference is answered at paragraph 98 to the limited extent that Cooperative Societies are not covered under Entry No.45 of the ListI and Cooperative Banks are covered under Section 32 of the ListII for the State Cooperative Banks and not for Multi State Cooperative Banks, which are established under Multi State Cooperative Societies Act. Further, the observations made by the Apex Court at paragraph 89 makes it clear that Multi State Cooperative Banks established under Multi State Cooperative Act would fall under Entry 44 of List I and not under Entry 32 of List II, which is only for the State Cooperative Banks. In view of the above, it is clear that the contention raised that as per the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra) even Multi State Cooperative Banks would not fall under Entry No.44 and it would only fall under Entry No.32 can be said as not only misconceived, but can only be said on a non existent premise as sought to be canvassed on behalf of the petitioners.

29.In the case of Administrator, Shri Dhakdi Group Coop. CottonSeed & Ors.(Supra) the Division Bench of this Court had no occasion to examine the aspect of testing the legality and validity of the notification issued by the Central Government visavis Multi State Cooperative Banks established under the Multi State Cooperative Societies Act but rather the scrutiny of the Court, as it is apparent from the points formulated and the discussion, clearly goes to show that the Court had examined the challenge of legislative competence for Cooperative Banks, which are established under State Cooperative Societies Act. It is true that while examining the said aspect, the Division Bench of this Court did consider the Entry No.43 of the ListI but, in any case, it had no occasion to consider the Entry No.44 of the ListI and the aspect as to whether Multi State Cooperative Banks established under Multi State Cooperative Societies Act would fall under Entry No.44 of the ListI or not. Such being the situation the concluding observations made by the Division Bench of this Court in the said decision is to be considered accordingly. Under these circumstances, the contention as sought to be canvassed by the learned Counsel for the petitioners

that the Division Bench of this Court in the said decision made observations that Multi State Cooperative Banks would not fall under Entry No.45 or even Entry No.44 and would only fall under Entry No.32, cannot be accepted and the same can also be said as misconceived and on a nonexistent premise.

30.The learned Counsel for the petitioners also made an attempt to contend that the observations made at paragraph 9798 in the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra) was considered by the Division Bench of this Court in the case of Administrator, Shri Dhakdi Group Coop. Cotton Seed & Ors.(Supra) and even the first part of the observations at 9798 that the field of Cooperative Societies cannot be said to have been covered by the Central Legislation by reference to Entry 45 of ListI of the Seventh Schedule of the Constitution and even for cooperative banks established under Multi State Cooperative Societies Act, in our view, appear to be not proper. The observations made at paragraph 98 by the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra) can be said as of a Cooperative Societies established under the State Legislation covered by Entry No.32 of List II of the Seventh Schedule of the Constitution of India and, therefore, not covered by Entry No.45 of ListI.

31.In view of the aforesaid observations and discussion, we find that the contention raised for absence of legislative competence on the part of the Parliament for inserting Multi State Cooperative Banks by Amending Act under Securitisation Act as well as RDDB Act is without any substance. The aforesaid aspect is coupled with the fact that the existence of Multi State Cooperative Banks are under Multi State Cooperative Societies Act, which is the principal Act enacted by the Parliament itself. If the Parliament had legislative competence to enact Multi State Cooperative Societies Act, which has operational area in more than one State, by necessary implication also it can be said that the Parliament has competence to make amendment in the Securitisation Act which is also a Central Act as well as RDDB Act, which is also a Central Act for including Multi State Cooperative Banks established under Multi State Cooperative Societies Act in the definition of the word "Bank" under the Securitisation Act as well as under RDDB Act by the Amending Act, which is subject matter of the present petitions. Hence, we find that the Amending Act cannot be said as beyond legislative competence of the Parliament as sought to be canvassed on behalf of the petitioners. Therefore, the said contention fails.

32.The aforesaid would take us to examine the second contention raised for only one conjoint remedy available and, therefore, if the remedy under RDDB Act was unavailable, the remedy under Securitisation Act can also be said as unavailable and, therefore, the Amending Act could be said as beyond the main Act and hence, the same could be said as ultra vires the Constitution.

33.It is hardly required to be stated that the operational area under the BR Act, RDDB Act and Securitisation Act, though some area may be common or overlapping, but it cannot be said that the same as to the fullest extent as sought to be canvassed. The BR Act is essentially for regulating banking activities, which essentially falls under Entry 45 of ListI.

34.Whereas, RDDB Act is for establishment of the Tribunal for expeditious adjudication and recovery of the debts due to banks and financial institutions. Hence, it can be said that the operational area of the BR Act is for regulating the banking activities, whereas RDDB Act is for providing recovery measure for expeditious adjudication of the recovery of the debts of the banks. The Securitisation Act is essentially for regulating securitisation and reconstruction of financial assets, but is also providing for the additional measure for enforcement of the security interest of the banks and financial institutions. Hence, it can be said that the RDDB Act, which allows the recovery by a specific mode through adjudication by the Tribunal is available to the banks and the financial institutions, but in addition thereto, measure has been provided for recovery under the Securitisation Act for enforcement of the security interest of the banks and financial institutions. It is with that purpose Section 37 has been incorporated for the Securitisation Act. Section 37 of the Securitisation Act reads as under:

"37. Application of other laws not barred:

The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

34.The aforesaid provisions of the Securitisation Act makes it clear that the provisions of the Securitisation Act or the Rules thereunder are in addition to and not in derogation of the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) (RDDB Act) or any other law for the time being in force. Merely because an appellate forum has been provided under Section 17 of the Securitisation Act before the Debts Recovery Tribunal, it cannot be said that unless the original jurisdiction of the Tribunal under RDDB Act is available, the remedy under Section 17 of the Securitisation Act before the Tribunal would be unavailable. In our view, the forum to be provided for adjudication of a particular dispute or litigation is always to be separately considered as a distinct and separate right of an adjudication created by the respective statute. Merely because the powers of appellate authority are conferred with the Tribunal so constituted under RDDB Act, it cannot be said that unless the remedy is available under RDDB Act, independent of Securitisation Act, the remedy under Section 17 of the Securitisation Act could not be available. Further both the remedies, namely; independent remedy available to any Bank or Financial Institution under RDDB Act is one aspect, whereas the remedy conferred by Section 17 to the Tribunal under Securitisation Act is another aspect.

35.Having considered the above and having found that the remedy under RDDB Act is an independent remedy, whereas the remedy provided under Securitisation Act is by way of supplementation and an additional remedy to the banks and financial institutions, we need to further consider the matter in light of the Amending Act. It is true that as per the decision of the Apex Court

in the case of Greater Bombay Cooperative Bank Limited (Supra) even for Multi State Cooperative Societies Act the Apex Court did observe that the remedy under RDDB Act would not be available by invoking the doctrine of incorporation, but when there is express provisions made in the Amending Act for which there is no lack of legislative competence, it is not possible to accept the submission that the Amending Act would run counter to the decision of he Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra), nor it would be possible to accept the contention that Multi State Cooperative Banks established under the Multi State Cooperative Societies Act will not be in a position to resort to the remedy under RDDB Act by Amending Act. It is hardly required to be stated that the availability of doctrine of incorporation is an aspect, which was considered but thereby it cannot be said that the Parliament had no legislative competence to make express provision under the Statute for providing a particular remedy or a forum. If the omission is found by the Courts in any law made, the Parliament or the Legislature has the power to make express provision by way of clarification or if not clarification by way of express provision to confer the remedy or forum. When the Parliament exercised the legislative power, unless the exercise of power is found to be beyond the legislative competence, per se, it cannot be said that the same is to nullify the effect of the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra). As such the contention raised by the learned Counsel for the petitioners is on a misconceived premise, inasmuch as invoking of doctrine of incorporation and to read a particular statute as incorporated therein is one thing whereas the making of express provision by the legislative action of the Parliament is another thing. Hence, we do not find that the Amending Act could be said as in contravention to the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra).

36.Learned Counsel for the petitioners made attempt to rely upon the decision of the Apex Court in the case of State of Tamil Nadu Vs. State of Kerala, reported in AIR 2014 SC, 2407 and more particularly the observations made at paragraph 121(IV) and (V) for contending that the legislative law, which renders the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra). It was submitted that hence, the action on the part of the Parliament by Amending Act could be said as ultra vires the Constitution.

37.As observed by us herein above, invoking of the doctrine of incorporation is one thing, whereas making the remedy available by express provision of a Statute is another thing. Hence, it is not possible to accept the contention that the Parliament by Amending Act has nullified the view taken by the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra). The enactment made by the Parliament by Amending Act in our view can be said as the remedy provided henceforth. After amendment made, the remedy of RDDB Act is expressly made available by Parliament.

38.In our view, there is no conflict by Amending Act with the decision of the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra). As such, in our view, the contention is misconceived on a nonexistent premise. In any case, in the very decision of the Apex Court, in the case of State of Tamil Nadu (supra), the Apex Court, after observing at paragraph 121 (iv) and (v) has further observed for the enabling power with the legislature and the same is available at paragraph (vi) and (vii), which for ready reference reads as under:

"(vi) If the legislature has the power over the subjectmatter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subjectmatter and whether in making the validation law it removes the defect which the courts had found in the existing law.

(vii) The law enacted by the legislature may apparently seem to be within its competence but yet in substance if it is shown as an attempt to interfere with the judicial process, such law may be invalidated being in breach of doctrine of separation of powers. In such situation, the legal effect of the law on a judgment or a judicial proceeding must be examined closely, having regard to legislative prescription or direction. The questions to be asked are, (i) Does the legislative prescription or legislative direction interfere with the judicial functions? (ii) Is the legislation targeted at the decided case or whether impugned law requires its application to a case already finally decided? (iii) What are the terms of law; the issues with which it deals and the nature of the judgment that has attained finality? If the answer to (i) to (ii) is in the affirmative and the consideration of aspects noted in question (iii) sufficiently establishes that the impugned law interferes with the judicial functions, the Court may declare the law unconstitutional."

37. If the Amending Act is tested in light of the aforesaid observations made by the Apex Court, it is not possible for us to accept the contention that by Amending Act the Parliament has nullified the effect of the judicial pronouncement made by the Apex Court in the case of Greater Bombay Cooperative Bank Limited (Supra).

38. The learned Counsel for the petitioners also made an attempt to rely upon the decision of the Apex Court in the case of S. T. Sadiq v. State of Kerala & Ors., reported in (2015) 4 SCC 400 and more particularly the observations made at paragraphs 13 and 14 for contending that if the legislature has made any enactment to annul a judgement of a Court, the same can be said as ultra vires and, therefore, in his submission such being the position in the present case, this Court may uphold accordingly.

39. As such, even if the principles as observed at paragraphs 13 and 14 are maintained, it is not possible to accept the contention that the Amending Act made by the Paragraphs under the Securitisation Act as well as RDDB Act is of attempting to nullify or annul the judgement of the Apex Court and/or this Court in the case of Greater Bombay Cooperative Bank Limited (Supra). Hence, the said attempt cannot be countenanced.

40. The learned Counsel for the petitioners also attempted to rely upon the decision of the Apex Court in the case of M/s. Transcore v. Union of India and Anr., reported in AIR 2007 SC 712 and more particularly the observations made at paragraph 46 for contending that the Apex Court in the said decision had found that it is a conjoint one remedy and no additional or separate remedy

provided under Securitisation Act visa vis RDDB Act. Therefore, it was submitted that once it is found as a conjoint remedy, if it is not available under RDDB Act, it would not be available under Securitisation Act also and, therefore, even if the operational area of the RDDB Act and Securitisation Act are separate, both should be conjoint and simultaneous for the purpose of confirmation of the jurisdiction with the Tribunal. In our view, the contention is misconceived because in the very decision of the Apex Court at paragraph 65, it has been observed by the Apex Court as under:

"67. ...The NPA Act (Securitisation Act in the present Group) is in addition to the DRT Act, therefore, the scheme of the SFC Act is different from the integrated scheme of the DRT Act and the NPA Act. ..."

41. Hence, we do not find that such attempt can be countenanced by the Court as sought to be canvassed.

42. In view of the aforesaid observations and discussion, we do find that the challenge to the constitutional validity of the Amending Act both under Securitisation Act as well as under RDDB Act should necessarily fail. Hence, ordered accordingly.

43. It is an admitted position that the Amending Act is brought into force w.e.f. January 2013, hence any action taken by the Bank against borrower or creditor prior to the Amending Act under the Securitisation Act cannot be maintained by respondent Bank, but at the same time, it will be for the concerned respondent Bank to initiate fresh action under the Securitisation Act and under the RDDB Act, as the case may be against the respective borrower or the guarantor, as the case may be and to proceed in accordance with law. At this stage, we may also record that SCA No.1330 of 2013, the learned Counsel for respondent No.2 Bank had also declared accordingly. However, the other matters where the action stands initiated after the amending Act and such actions are challenged by way of consequential relief, such relief cannot be granted, as this Court has held that the Amending Act under Securitisation Act as well as under RDDB Act is not ultra vires the Constitution and the same is found to be a valid piece of legislation. Under these circumstances, the prayer made in the respective petitions would fail.

44. In SCA No.8231 and 8234 of 2014 in addition to the challenge to the constitutional validity of the Amending Act under the Securitisation Act as well as under RDDB Act the petitioners have also made prayer for challenging the RBI Guidelines. In our view, the challenge to the RBI Guidelines as such cannot be mixed with the challenge to the constitutional validity of the Act. Hence, as declared by the learned Counsel for the respective petitioners, Mr.D.P. Buch that the question shall get concluded for challenging to the Amending Act whereas for challenging RBI Guidelines, it would be open to the respective petitioners to prefer separate petitions, where the question in that regard would be examined in accordance with law.

45. After the pronouncement of the order, the learned Counsel for the petitioners prayed that interim protection has been granted to all the petitioners pending petitions and the same be continued for some time so as to enable the respective petitioners to have recourse in accordance with law. Considering the facts and circumstances, for a period of three weeks from today statusquo shall be maintained by both the sides.

46. Mr.Shah, learned Counsel appearing for the petitioners in majority of the matters, voiced the apprehension that as the Amending Act is found to be valid and the consequential action of the Multi State Cooperative Banks is found to be valid in law, the petitioners may have the remedy under Section 17 of the Securitisation Act and it may not get concluded by the dismissal of the present petitions.

47. We find that the said apprehension is ill founded, because if the remedy is otherwise available under Section 17 of the Securitisation Act, such remedy may be available. In the present group of matters, this Court has examined the limited challenge to the validity of the Amending Act. The consequential action thereto and other aspect on merits shall not get concluded so far as the action under Section 13 of the Secutisation Act or the subsequent action taken on the premise that the remedy under Securitisation Act and RDDB Act are available to MultiState Cooperative Banks.

48. All petitions are disposed of accordingly. Subject to observations and directions made, Rule discharged.

Petitions disposed of