

**(2008) 01 KL CK 0045**

**In the High Court Of Kerala**

**Case No : W.A. No's. 2070, 2663 and 2672 to 2674 of 2007**

George Kutty Abraham and Others

APPELLANT

Vs

Secretary, Kottayam District Co-operative Bank Ltd. and  
Others

RESPONDENT

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**Date of Decision : 04-01-2008**

**Acts Referred:**

Banking Regulation Act, 1949 — Section 5, 56  
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 2  
Securitisation and Reconstruction of Financial Assets and Enforcement of Security  
Interest Act, 2002 (SARFAESI) — Section 13(4), 17, 2, 2(1)

**Citation : AIR 2008 Ker 137 : (2008) 1 ILR (Ker) 251**

**Hon'ble Judges : K.P. Balachandran, J;K. Balakrishnan Nair, J**

**Bench : Division Bench**

**Advocate : Mathai M. Paikeday, for the Appellant; Sunil Cyriac, S.C., for the  
Respondent**

**Final Decision : Dismissed**

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## **Judgement**

K. Balakrishnan Nair, J.—The point that arises for decision in these Writ Appeals is whether the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Securitisation Act) are applicable to District Co-operative Banks and Urban Banks and whether those Banks can invoke those provisions to take over and sell the assets of the loanees, given by way of security. Writ Appeal No. 2070/2007 is treated as the main case.

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2. The appellants 1 and 2, who are husband and wife, availed a loan of Rs. 5 lakhs from the Kottayam District Co-operative Bank. The third appellant, who is the mother of the first appellant, availed another loan of Rs. 5 lakhs from the said Bank. Landed Property, having an extent of 1.052 hectares, belonging to the first appellant was given as security for the said loans. The loans were availed in

October 2004 and as per the loan agreement, the repayment was to be completed by the end of 2009. Since the appellants defaulted, the Bank issued Ext. P2 notice dated 25-6-2006 under the Securitisation Act. Simultaneously, the Bank moved the Arbitrator u/s 69 of the Kerala Co-operative Societies Act, for recovering the amount. Ext. P3 dated 14-9-2006 is the notice issued by the Arbitrator to the first appellant in the arbitration case filed against him. Subsequently, on 13-2-2007, the authorised officer of the Bank, the 4th respondent herein issued Ext. P4 notice u/s 13(4) of the Securitisation Act, intimating the take over of the secured asset. Thereupon, the first appellant filed Ext. P5 representation, praying for instalment facility to pay the loan amount. He undertook to pay Rs. 50,000/- per month towards the loan account. Challenging Exts. P2 and P4, the Writ Petition was filed. He also claimed the facility to pay the loan amount @ Rs. 15,000/- per month. One of the grounds taken in the Writ Petition was that the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, RDDB Act) will not be applicable to co-operative societies. In the statement of facts at paragraph 6, it is contended that the cooperative banks have no jurisdiction to invoke the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Though mention is made of the Securitisation Act also, it is not specifically pleaded that the provisions of that Act are not applicable. The learned Single Judge disposed of the Writ Petition, giving instalment facility for paying the amount due to the Bank. Feeling aggrieved by the said direction of the learned Single Judge, this Writ Appeal is filed. In the Appeal, the main ground taken is that the provisions of the Securitisation Act are not applicable to Co-operative Banks. Reliance is placed on the decision of the Apex Court in Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others, , in support of the said submission.

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3. The appellants in these appeals are persons, who have availed of loans from the Kaduthuruthy Urban Co-operative Bank limited, Kaduthuruthy, Kottayam. The said Bank invoked the provisions of the Securitisation Act to take over the secured assets and to sell them by issuing public notification. Thereupon, the loanees filed Writ Petition (C) Nos. 27432, 27617, 27622 and 27626/07, challenging the very jurisdiction of the Bank to invoke the provisions of the Securitisation Act. All the Writ Petitions were disposed of by a common judgment, giving some instalment facility to the writ petitioners to clear the loan amount. Feeling aggrieved by the said judgment and also pressing the ground that the Bank has no jurisdiction to invoke the provisions of the Securitisation Act, these Writ Appeals are filed.

4. We heard the learned Senior Counsel Shri Mathai M. Paikaday for the appellants in W.A. No. 2070/07 and the learned Counsel Shri T. Ravikumar, for the appellants in the other Appeals. We also heard Shri George Poonthottam for the Kottayam District Cooperative Bank Ltd. and Shri Varghese. C. Kuriakose for the Kaduthuruthy Urban Cooperative Bank Ltd. The learned Senior Counsel

submitted that the Kerala Co-operative Societies Act is a special enactment meant for co-operative societies. It contains provisions for recovery of loan amount from the loanees apart from other provisions concerning incorporation, administration etc. of the co-operative societies. It is a self contained code. Therefore, the co-operative banks should invoke the provisions of the said Act for the recovery of loans due to them and the recourse made to the provisions of the Securitisation Act by them is unauthorised. He also submitted that Section 56 of the Banking Regulation Act would show that the provisions of the said Act have been made applicable to co-operative banks for bringing them under the regulation and control of the Reserve Bank of India. A Co-operative Bank cannot be treated as a banking company. Thirdly, it is submitted that the Parliament has no legislative competence to legislate on co-operative societies and therefore, the co-operative societies cannot invoke the provisions of a legislation framed by the Parliament, dealing with banking. To amplify the above submissions, the learned Senior Counsel took us through the various provisions of the Securitisation Act. Special reference was made to Section 2(1)(c) of the Act, which defines a Bank. Section 2(1)(c) reads as follows:

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
- (v) such other bank which the Central Government may, by notification, specify for the purposes of this Act.

According to the learned Counsel, "such other bank" mentioned in Sub-clause (v) of Clause (C) of Sub-section (1) of Section 2 should be a Bank similar to those covered by Sub-clauses (i) to (iv). A banking company defined in Section 2(1)(d) reads as follows:

"banking company" shall have the meaning assigned to it in Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949).

Section 5(c) of the Banking Regulation Act, 1949 reads as follows:

banking company means any company which transacts the business of banking in India.

Referring to the above provisions, the learned senior counsel reiterated that the provisions of the Securitisation Act will apply only to a banking company and a cooperative society engaged in banking business can never be treated as a banking company. The learned senior counsel referred to the decision in Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others, , to contend that the said decision will govern the applicability of Securitisation Act also to co-

operative banks, though the point decided in that decision was concerning the applicability of Recovery of Debts due to Banks and Financial Institutions Act, 1993, to co-operative banks.

5. The learned senior counsel submitted that the Securitisation Act is enacted under Entry 45 of List I and therefore, the said Act cannot have any application to a co-operative society. He also relied on paragraphs 45 to 48, 70, 71 and 80 of the aforementioned decision, in support of his submissions. The learned Counsel Shri. T. Ravikurnar submitted that against the adverse action taken u/s 13(4) of the Securitisation Act, an appeal is provided to the Debts Recovery Tribunal, constituted under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. He made special reference to Section 2(1)(a) of the Securitisation Act, which defines the appellate tribunal as the Debt Recovery Appellate Tribunal and Section 2(i) which defines Tribunal as the Debt Recovery Tribunal established under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. In view of the decision of the Apex Court in Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others, , a co-operative society cannot invoke the appellate remedy available u/s 17 of the Securitisation Act. So, this is a sure indication that the provisions of the Securitisation Act are not applicable to co-operative banks, it is submitted.

6. Shri. George Poonthottam, learned Counsel appearing for the Kottayam District Co-operative Bank took us through the objects and reasons for enacting the Securitisation Act. It was enacted to empower the Indian banks to take over the secured assets and recover the loan amount by selling them without the intervention of Courts. In many developed countries, such statutory provisions are available. So, to put the Indian Banks also on the same level ground, the provisions were enacted. He also pointed out that there is no reason why the co-operative banks alone should be left behind from the purview of the Securitisation Act. He further submitted that Section 2(1)(c)(v) of the Securitisation Act is not challenged by the appellants. The learned Counsel also pointed out that invoking the power under the said provision, the Government of India have issued a notification on 28-1-2003, which is published in the Gazette of India dated 28-1-2003. As per the said notification, co-operative bank as delined under Clause (cci) of Section 5 of the Banking Regulation Act, will be treated as a bank for the purpose of the Securitisation Act. The said notification has also not been challenged. So, the Writ Appeals are not maintainable, it is submitted. The learned Counsel also submitted that the Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others, only decided the applicability of the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 to co-operative banks. The said decision is an authority only for the said point. The learned Counsel also submitted that a close reading of the said decision would show that the Apex Court does not rule out the applicability of the provisions of the Securitisation Act to co-operative banks. The learned Counsel further referred to the definition of central co-operative bank, co-operative society, primary rural credit society and State cooperative Bank, contained in

Section 5(ccvii) of the Banking Regulation Act, 1949, introduced as per Section 56 therein. The learned Counsel Shri. Varghese C. Kuriakose referred to the decision of the Apex Court in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, and submitted that the remedy available to the appellants is only to move the Debt Recovery Tribunal u/s 17 of the Securitisation Act. The learned Counsel also submitted that no writ will lie against co-operative banks. Therefore, the Writ Appeals are liable to be dismissed, it is submitted.

7. The main contention of the learned Counsel for the appellants was that the decision in *Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others*, will, on all fours, apply to the provisions of the Securitisation Act. We find it difficult to accept the said contention. In the said case, the Apex Court found that the co-operative bank is not a bank as defined u/s 2(d) of the RDDB Act and therefore, the provisions of the said Act are not applicable. The definition of bank in the said Act contained in Section 2(d) thereof reads as follows:

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.

Unless a co-operative bank comes under Clause (1) of the above definition, the provisions of the Act are not applicable to it. Analysing the provisions of the RDDB Act, the Apex Court held that a co-operative bank can never be treated as a banking company. But, as noticed by the Apex Court, in the said decision itself, in the definition of bank in Section 2(1)(c) under the Securitisation Act, which we have already quoted above, there is Clause (v), which enables the Central Government to notify other banks also as banks for the purposes of the Act. The Central Government, in fact, invoked the said power and issued a notification to the effect that a co-operative bank is also a bank for the purpose of the Securitisation Act. The said notification dated 28-1-2003 reads as follows:

S.O. 105(H)--In exercise of the powers conferred under item (v) of Clause (c) of Sub-section (1) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby specifies "Co-operative Bank" as defined in Clause (cci) of Section 5 of Banking Regulation Act, 1949 (10 of 1949) as "bank" for the purpose of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

In the absence of any challenge to the said notification, the contention of the appellants that the provisions of the Securitisation Act are not applicable to co-operative banks, cannot be accepted. The remedy of filing a petition u/s 17 of

the Securitisation Act can be invoked by the loanee aggrieved by the actions of the secured creditor u/s 13(4) of the Securitisation Act. Always, it is the loanee, who invokes the said provision. While enacting the Securitisation Act, the Parliament has provided a remedy of filing a petition u/s 17 of the Securitisation Act to the aggrieved persons. Instead of providing a separate machinery, the Parliament in its wisdom provided that the aggrieved party can move the machinery provided under the RDDB Act. The decision of the Apex Court in Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others, disables a co-operative bank from moving the DRT for the recovery of loans. The said decision cannot, in any way, affect the remedy provided u/s 17 of the Securitisation Act. Therefore, the contentions in this regard are plainly untenable.

8. In the absence of any challenge to any of the provisions of the Securitisation Act or the notification issued thereunder, we feel that it is unnecessary to consider the contentions raised by the learned senior counsel for the appellants concerning legislative competence etc. Since the point whether a writ will lie against a co-operative bank was not seriously raised or canvassed, we are leaving the said question open. But, even assuming a writ will lie against a co-operative bank this Court can decline jurisdiction in view of the alternative remedy available to the aggrieved loanee under the provisions of Section 17 of the Securitisation Act. In this case, since a substantial question of law concerning the applicability of the Securitisation Act to Co-operative Banks has been raised for the consideration of this Court, we did not relegate the appellants to invoke the statutory remedy at the threshold and decided the question by ourselves.

9. In the result, the Writ Appeals fail and they are accordingly dismissed. But, it is clarified that this Judgment will not affect the rights, if any, of the appellants to invoke the statutory remedy available to them. No costs.