

(2006) 07 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11153 of 2005

Manoj Tarwala

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 06-07-2006

Acts Referred:

Banking Regulation Act, 1949 — Section 3, 5, 56
Companies Act, 1956 — Section 3, 3(1), 56, 591
Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Co-operative Societies Act, 1960 — Section 2(di)
Madhya Pradesh Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 — Section 2, 3, 3(1), 3(1)(B), 4(2)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 17(1), 18, 19, 2

Citation : (2006) ILR (MP) 980 : (2006) 3 MPJR 325

Hon'ble Judges : A.K. Patnaik, C.J.; Ajit Singh, J

Bench : Division Bench

Advocate : Sharad Verma, for the Appellant; Sanjay K. Agrawal, Dy. A.G. for Respondent Nos. 1, 3 and 4 and V.S. Shrotri and A.P. Shorti, for the Respondent

Judgement

A.K. Patnaik, C.J.

The petitioner had availed a cash credit limit of Rs. 10 lakhs against the security of mortgage of his property for his business from the Citizen Cooperative Bank Limited, Burhanpur, District Burhanpur, M.P. (for short "the Cooperative Bank"). A revenue recovery certificate, dated 23-3-2005 was issued by Tehsildar, Burhanpur under the M.P. Land Revenue Code, 1959 (for short "the Land Revenue Code") to recover an amount of Rs. 11,26,796/- in the said cash credit account due from the petitioner. The petitioner filed a writ petition in this Court registered as W.P. No. 1711 of 2005, contending inter alia that the said amount said to be due from the petitioner can only be recovered under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the 1993 Act") and that the Tehsildar had not jurisdiction to issue the aforesaid recovery certificate under the Land Revenue Code. By order dated 7-4-2005, a learned

Single Judge of this Court disposed of the said W.P. No. 1711 of 2005 with the direction that the petitioner would be at liberty to file an objection raising this jurisdictional issue. Thereafter, the petitioner filed a detailed representation before the Tehsildar Burhanpur contending inter alia that the amount sought to be recovered from the petitioner being more than Rs. 10 lakhs can only be recovered by the Co-operative Bank under the 1993 Act and not under the Land Revenue Code. By order dated 22-8-2005, the Tehsildar, Burhanpur rejected the said contention and held that the amount even though more than Rs. 10 lakhs can be recovered as arrears of land revenue under the M.P. Lokdhan Shodhya Rashiyon Ki Vasuli Adhiniyam, 1987 for short "the 1987 Adhiniyam". Aggrieved by the said order dated 22-8-2005 passed by the Tehsildar, Burhanpur in Revenue Case No. 104- A/76-04-05, the petitioner has filed this writ petition with the prayer that the order dated 22-8-2005 passed by the Tehsildar, Burhanpur be quashed and pending disposal of the writ petition, the operation of the impugned order dated 22-8-2005 and its execution be stayed.

When the matter was taken up for admission by the learned Single Judge, Mr. Sharad Verma, learned Counsel for the petitioner contended that the amount recoverable from the petitioner exceeds Rs. 10 lakhs and hence the Revenue Officer had no jurisdiction to recover the amount of arrears of land revenue under the 1987 Adhiniyam. He cited before the learned Single Judge a decision in Santosh Vs. Central Bank of India, , in which a learned Single Judge of this Court relying on the decisions of the Supreme Court in Santosh Vs. Central Bank of India, as well as AIR 2003 SC 2103 had taken a view that the provisions of the 1993 Act would override the provisions of the 1987 Adhiniyam in view of the provisions of Section 34(1) of the 1993 Act. While considering the aforesaid contention of Mr. Sharad Verma, the learned Single Judge found that in M.L. Chaurasia Vs. Tehsildar, Balaghat and Others, , a learned Single Judge of this Court had taken a contrary view that the provisions of the 1993 Act do not oust the jurisdiction in any manner, which is to be exercised u/s 3 of the 1987 Adhiniyam for recovery of a sum of Rs. 40 lakhs. Due to divergent opinion of the two learned Single Judges of this Court in the case of Santosh Mishra (supra), and in the case of MX. Chourasiya (supra), the learned Single Judge by order dated 22-9-2005, has referred the following two questions to a Larger Bench:

(i) Whether the Co-operative Bank comes within the ambit and sweep of the 1993 Act ? and

(ii) If it does not come within the ambit of the 1993 Act and the debts dues are more than Rs. 10 lakhs, whether the revenue recovery certificate can be issued ?

By the said order dated 22-9-2005, the learned Single Judge as an interim measure, also directed that the Co-operative Bank will stay its hand to recover the amount on the basis of the revenue recovery certificate. Pursuant to the said order dated 22-9-2005, the matter has been referred to this Division Bench.

On the first question, Mr. Sharad Verma, learned Counsel for the petitioner

submitted that the Cooperative Bank comes within the ambit and sweep of the 1993 Act. He pointed out that Section 2(d) of the 1993 Act defines "bank" to mean a "banking company" and Section 2(e) of the 1993 Act states that the expression "banking company" shall have the meaning assigned to it in Clause (c) of Section 5 of the Banking Regulations Act, 1949 (for short "the 1949 Act"). He then referred to Clause (c) of Section 5 of the 1949 Act, which defines a "banking company" to mean any company which transacts the business of banking. He submitted that the said Clause (c) of Section 5 of the 1949 Act has to be read with Section 56(a)(i) of the 1949 Act which states that reference to a "banking company" or the "company" or "such company" shall be construed as a reference to a "Cooperative Bank". He referred to Section 56(cc-i), which defines "Cooperative Bank" to mean a State Cooperative Bank, a Central Co-operative Bank and a Primary Cooperative Bank. He submitted that Section 56(o) (1)(b) of the 1949 Act states that Co-operative Bank is one which holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose. He contended that these provisions in Section 56 of the 1956 Act would show that a Co-operative Bank is also a "banking company" and is a Bank within the meaning of Section 2(d) of the 1993 Act. He submitted that Section 17 of the 1993 Act vests jurisdiction only on the Tribunal constituted under the said 1993 Act to entertain applications from the Banks for a recovery of dues to such banks and Section 18 of the 1993 Acts bars the jurisdiction of any Court or any other authority to exercise any jurisdiction or power or authority in-relation to such matters specified in Section 17 of the 1993 Act. According to Mr. Verma, therefore, the 1993 Act is applicable to the Co-operative Bank also for adjudication of recovery of debts due to it and for matters connected therewith or incidental thereto and the jurisdiction of all other authorities and Courts including revenue authorities to adjudicate the recovery of such dues due to the Co-operative Bank is barred.

In support of his aforesaid submissions, Mr. Verma relied on the decision in Shamrao Vithal Co-operative Bank Ltd. Vs. Star Glass Works, in which a Division Bench of the Bombay High Court has held that a Co-operative Bank is not at all intended to be excluded from the benefits of machinery made available to the banks under the 1993 Act for recovery of outstanding debts. He submitted that the aforesaid judgment of the Division Bench of the Bombay High Court in Shamrao Vithal Co-operative Bank Ltd. (supra), was sought to be challenged before the Supreme Court in SLP (Civil) No. 1573 of 2003 and other S.L. Ps. but by order dated 17-2-2003, the Special Leave Petitions were rejected by the Supreme Court. He submitted that subsequently a Full Bench of Bombay High Court again held in Narendra Kantilal Shah Vs. Joint Registrar, Co-operative Societies (Appeal) and Others, , that the provisions of the 1993 Act are applicable to debts due to a co-operative bank in excess of Rs. 10 lakhs and that the Courts and authorities under the Maharashtra Co-operative Societies Act, 1960 and the Multi-State Co-operative Societies Act, 2002, would cease to have jurisdiction to entertain applications submitted by the co-operative banks for

recovery of their dues. He pointed out that SLPs were filed against the said judgment of the Full Bench of the Bombay High Court in the case of *Narendra Kanlilal Shah v. Joint Registrar, Co-operative Societies (Appeal)*, Bombay and Ors. (supra), and by orders passed in Civil Appeal No. 432 of 2004, the Supreme Court has referred the matter to a Larger Bench but the said judgment has not been stayed and the matter is pending before the Supreme Court. He also relied on the decision of the Full Bench of the Andhra Pradesh High Court in *M. Babu Rao v. Deputy Registrar of Cooperative Societies, Hyderabad and Ors.* AIR 2005 AP 661, wherein a similar view has been taken that for recovery of debts of Rs. 10 lakhs or more by a cooperative bank, Tribunal constituted under the 1993 Act would have exclusive jurisdiction and that the jurisdiction power authority including the Registrar under the A.P. Co-operative Societies Act, 1964 is wholly excluded. He submitted that the said judgment of the Full Bench of the Andhra Pradesh High Court has also been challenged before the Supreme Court and the matter is pending before the Supreme Court.

In reply, Mr. V.S. Shrotri, learned Counsel appearing for the respondent Cooperative Bank submitted that u/s 19 of the Act, a Bank or a financial institution can make an application to the Tribunal constituted under the Act for recovery of any debt due against any person to the Bank/Financial Institution, but a Cooperative Bank constituted under the M.P. Co-operative Societies Act, 1960 is neither a Bank nor a Financial Institution for purposes of the 1993 Act. He referred to Section 2(d) of the 1993 Act which defines a "bank" as a "banking company". He submitted that Section 2(e) of the 1993 Act states that "banking company" shall have the same meaning as assigned to it u/s 5(c) of the 1949 Act. He submitted that Section 5(c) of the 1949 Act defines a "banking company" to mean "any company" which transacts the business of banking and Section 5(d) of the 1949 Act defines the term "company" as meaning a Company as defined u/s 3 of the Companies Act, 1956. He submitted that Section 3 of the Companies Act, 1956 defined a "company" as meaning a Company formed and registered under the Companies Act, 1956, and therefore, the Co-operative Bank which is neither formed nor registered under the Companies Act, 1956, is not a bank for purposes of the 1993 Act. He also referred to the definition of "financial institution" in Section 2(h) of the 1993 Act to show that a Cooperative Bank is not a financial institution for purposes of the 1993 Act.

Mr. Shrotri, referred to the provision of Section 3 of the 1949 Act which states that nothing in the 1949 Act shall apply to (a) a primary agricultural credit society, (b) a cooperative land mortgage bank, and (c) any other Co-operative Society except in the manner and to the extent specified in Part V of the 1949 Act. He submitted that it will thus be clear from Section 3 of the 1949 Act that the 1949 Act has been made applicable to Co-operative Societies only to the extent specified in Part V of the 1949 Act. He argued that Section 56 in Part V of the 1949 Act states that the 1949 Act will apply to Co-operative Societies subject to the modifications indicated therein. He submitted that the purpose of inserting Part V in the 1949 Act by Amendment Act No. 23 of 1965 was only to bring

Cooperative Banks under the Banking Regulations Act, 1949 for purposes of regulating banking business of Co-operative Societies engaged in the banking business and that too to the extent specified in Part V of the 1949 Act and this would be clear from a reading of the Preamble of the Banking Laws Amendment Act, 1965.

Mr. Shrotri submitted that Section 56 of the 1949 Act by fiction has included cooperative bank within the meaning of "banking company" only for purposes of the 1949 Act and the law is well settled that such legal fiction created by an Act is normally to be restricted to that Act and cannot be extended to cover any other Act and, therefore, the Cooperative Bank is not a "banking company" and a "bank" for purposes of the 1993 Act. In support of his contention that a legal fiction created by an Act is to be restricted to that Act and cannot be extended to cover any other Act, he cited the decisions of the Supreme Court in *State of Karnataka Vs. K. Gopalakrishna Shenoy and Another*, *Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc.*, and *State of Maharashtra Vs. Laljit Rajshi Shah and Others*, .

Mr. Shrotri submitted that it will be clear from a reading of the relevant provisions of the 1993 Act, the Companies Act, 1956 and the 1949 Act that the 1993 Act is not applicable for recovery of debts due to the cooperative bank, which is not formed and registered under the Companies Act, 1956 but formed and registered under the M.P. Co-operative Societies Act, 1960. He cited the judgment of Rajasthan High Court in *Phoneix Impex Vs. State of Rajasthan and Others*, in which it has been held that the 1993 Act is not applicable to recovery of dues to a cooperative bank not formed and registered under the Companies Act, 1956. He submitted that the view taken by the Division Bench of the Bombay High Court in the case of *Shamrao Vithal Cooperative Bank Ltd. (supra)*, and the Full Bench of the Bombay High Court in the case of *Narendra Kantilal Shah v. Joint Registrar, Co-operative Societies (Appeal), Bombay and others (supra)*, is an erroneous view as it proceeds on an assumption that the purpose of the 1993 Act and the 1949 Act is one and the same. He submitted that the purpose of the 1993 Act is to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto, whereas the purpose of the 1949 Act is to regulate banking transactions of banking companies and the 1949 Act was amended by Act No. 23 of 1965 to extend only the provisions of the 1949 Act to co-operative societies which are engaged in the banking business. He pointed out that in any case, the decision of the Full Bench of the Bombay High Court in the case of *Narendra Kantilal Shah (supra)*, has been challenged before the Supreme Court.

We may now consider the provisions of the 1993 Act, the Companies Act, 1956 and the 1949 Act for the purpose of answering the first question referred to us whether the cooperative bank comes within the ambit and sweep of the 1993 Act. Sections 2(d), 2(e), 2(o), 17(1) and 18 of the 1993 Act are quoted herein

below:

2. (d) "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.

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

2. (o) "Tribunal" means the Tribunal established under Sub-section (1) of Section 3.

17. Jurisdiction, powers and authority of Tribunals.-

(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the Banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2)...

18. Bar of Jurisdiction.-

On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority except the Supreme Court, and a High Court exercising jurisdiction under Article s 226 and 227 of the Constitution in relation to the matters specified in Section 17.

A reading of Sections 2(o) and 17(1) of the 1993 Act would show that the Tribunal constituted u/s 3(1) of the said Act shall exercise the jurisdiction, powers and authority to entertain and decide applications from the Banks and financial institutions for recovery of debts due to such banks and financial institutions and Section 18 states that no Court or other authority shall have, or be entitled to exercise, any jurisdiction, power or authority except the Supreme Court and a High Court exercising jurisdiction under Article s 226 and 227 of the Constitution in relation to the matters specified in Section 17. Thus, it is only the Tribunal constituted under the 1993 Act which can exercise the jurisdiction, powers and authority to entertain and decide applications from the Banks and Financial Institutions for recovery of debts due to such banks and financial institutions. The case of the petitioner is not that the cooperative bank is a financial institution for purposes of the 1993 Act. The case of the petitioner is that the cooperative bank is also a bank for purposes of the 1993 Act. The term "bank" has been defined u/s 2(d) of the 1993 Act, quoted above, to mean inter

alia a "banking company" and the contention of the petitioner is that the cooperative bank is a "banking company" and therefore, a bank for purposes of the 1993 Act.

We are unable to accept the aforesaid contention of the petitioner for the reasons that follow. Section 2(e) of the 1993 Act states that in the 1993 Act a "banking company" shall have the same meaning assigned to it in Clause (c) of Section 5 of the 1949 Act and therefore, for purposes of the 1993 Act, "a banking company" would mean a "banking company" as defined in Clause (c) of Section 5 of the 1949 Act and in no other provision of the 1949 Act. Clause (c) of Section 5 of the 1949 Act is quoted herein below:

(c) "banking company" means any company which transacts the business of banking.

The term "company" has also been defined in Section 5(d) of the 1949 Act, which is quoted herein below:

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

Hence, "company" means a Company as defined in Section 3 of the Companies Act, 1956. Section 3(1) of the Companies Act, 1956 is quoted herein below:

3. (1) "company" means a company formed and registered under this Act or an existing company as defined in Clause (ii).

Under Section 3(1) of the Companies Act, 1956, it is clear that a "company" means a company formed and registered under the Companies Act, 1956. Thus, a cooperative bank which is not formed and registered under the "Companies Act, 1956 is not a company and accordingly not a banking company within the meaning of Clause (c) of Section 5 of the 1949 Act. Therefore, a Co-operative Bank does not fall within the definition of "bank" in Section 2(d) of the 1993 Act.

The contention of the petitioner, however, is that Section 56 introduced in Part V of the 1949 Act by the Amendment Act 23 of 1965 has also to be looked into for the purpose of finding out the meaning of the expression "banking company" and "bank" for purposes of the 1993 Act. It is difficult to accept the aforesaid contention of the petitioner because Section 2(e) of the 1993 Act states that "banking company" shall have the meaning assigned to it in Clause (c) of Section 5 of the 1949 Act and makes no reference to Section 56 of the 1949 Act. If the legislative intent behind the 1993 Act was to include also a co-operative society carrying on banking business as mentioned in Section 56 of the 1949 Act. Section 2(e) of the 1993 Act would have given a wider definition of the expression "banking company" to mean not only a banking company as defined in Clause (c) of Section 5 of the 1949 Act but also a co-operative society carrying on the business of banking as mentioned in Section 56 of the 1949 Act. Hence, for the purpose of 1993 Act, a Co-operative Society carrying on the business of

banking would not come within the purview of the expressions "bank" and "banking company".

Our aforesaid conclusion is also supported by what is provided in Section 56 of the 1949 Act. Relevant portion of the said Section 56 in Part V of the 1949 Act is quoted below:

Section 56. Act to apply to Co-operative Societies subject to modifications.-

The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to the following modifications, namely:

(a) throughout this Act, unless the context otherwise requires,-

(i) references to a "banking company" or "the banking company" or "such company" shall be construed as references to a cooperative bank,

(ii) references to "commencement of this Act" shall be construed as reference to commencement of the Banking Laws Application to Co-operative Societies Act, 1965.

(b)...

(c)...

(ci)...

(cii) "Co-operative Bank" means a State Cooperative Bank, a Central Co-operative Bank and a Primary Cooperative Bank.

Section 56 only states that the provisions of the "this Act" namely the 1949 Act shall apply to or in relation to co-operative societies as they apply to or in relation to banking companies subject to modifications mentioned therein. Hence, it does not say that the provisions of the 1993 Act shall apply to, or in relation, to co-operative societies as this apply to banking companies subject to modifications stated in Section 56 of the 1949 Act. Similarly, the provisions of Section 56(a)(i) of the 1949 Act state that throughout "this Act", namely the 1949 Act, unless the context otherwise requires, references to a "banking company" or "a company" or "such company" shall be construed as references to a cooperative bank. It does not say that throughout the 1993 Act, unless the context otherwise, references to a "banking company" or "a company" or "such company" shall be construed as references to a cooperative bank. Moreover, the Preamble of the Banking Laws Amendment Act, 1965 which introduced Section 56 in the 1949 Act, is quoted herein below:

An Act further to amend the Reserve Bank of India Act, 1934 and the Banking Companies Act, 1949, for the purpose of regulating the banking business of certain co-operative societies and for matters connected therewith.

It is thus clear that the object of introducing Section 56 in the 1949 Act by the

Amendment Act of 1965 was to apply the provisions of the 1949 Act for regulating the banking business of certain co-operative societies and for matters connected therewith. Section 56 of the 1949 Act, therefore, cannot be relied upon for coming to the conclusion that the provisions of the 1993 Act also have to be extended to recovery of debts due to co-operative societies carrying on banking business.

We find support for our aforesaid conclusion in the Division Bench judgment of the Rajasthan High Court in M/s. Phoenix Impex (supra), cited on behalf of the respondent Cooperative Bank. Paragraphs 10,11,12 and 13 of the said judgment of the Division Bench of the Rajasthan High Court are quoted herein below:

10. The crux of the matter is whether Section 56(a)(i) changes the definition of "Banking Company" given in Section 5(c) of the Original Act No. 10 of 1949. It is, of course, there that the opening words of Clause (a) are "throughout this Act" but by these words it cannot be inferred that even the definition given in Section 5(c) of the Act No. 10 of 1949 has been amended. In our opinion, in the definition of "banking company" given in Clause (c) of Section 5, the words "cooperative bank" cannot be read. What seems to have been done by the Legislature is that it kept the definition of "banking company" given in Section 5(c) of the main Act No. 10 of 1949 intact but wherever the words "banking company, company or such company" have appeared in the Act of 1949 it will also include a Cooperative Bank. If the intention of the legislature had been to change the definition of the banking company given in Clause (c) of Section 5, it could very well change the definition itself. The fact that the definition has not been changed the legislative intent is clear that it wanted to keep the definition of "banking company" given in Clause (e) of Section 5 intact.

It is relevant to refer to Section 3 of the Banking Regulations Act of 1949 which is to the following effect:

3. Act to apply to co-operative societies in certain cases.- Nothing in this Act shall apply to-

- (a) a primary agricultural credit society;
- (b) a cooperative land mortgage bank; and
- (c) any other co-operative society, except in the manner and to the extent specified in Part V.

The opening words of this section clearly indicate that the provisions of the Banking Regulation Act of 1949 do not apply to any Cooperative Bank except in the manner and to the extent as mentioned in Part V which was added vide Act No. 23 of the Act of 1965. The purpose of adding Part V by the Amendment Act No. 23 of 1965 was only to bring cooperative banks under the Banking Regulations Act of 1949 for the purpose of regulating banking business to the extent specified in Part V. A reading of the preamble of the Banking Laws Act, 1965 No. 23 of 1865 which is to the following effect makes the position crystal

clear:

An Act further to amend the Reserve Bank of India Act, 1934 and the Banking Companies Act, 1949 for the purpose of regulating the banking business of certain co-operative societies and for matters connected therewith.

It is, thus, obvious that for the purpose of regulating the banking business of all the institutions, including the cooperative banks, the Banking Companies Act, 1949 was amended and it was renamed vide Act No. 23 of 1965 as Banking Regulation Act, 1949. The purpose of enactment by Act No. 23 of 1965 was not to regulate each and every function of a Cooperative Bank. It is only in order to regulate the banking business, i.e., what shall be the control of the Reserve Bank to the advances to be made to the Cooperative Banks or what shall be the reserve ratio, what shall be the restriction on the loans and advances etc., that the amendment in the Act No. 10 of 1949 was made. In our opinion, this amendment does not change the definition of "banking company" given in Clause (c) of Section 5 of the Principal Act.

Even if we assume for arguments sake that Clause (a)(i) of Section 56 amends the definition of "banking company" then also it will have to be found that this amendment is only for the limited purpose that the banking business run by the co-operative societies shall also be considered as banking. In our opinion, the learned Single Judge has rightly held that a "banking company" under the Banking Regulation Act, 1949 is one which is formed and registered under the Companies Act. A cooperative bank, may be called a banking business, yet it does not become a "company" formed and registered under the Companies Act. As such, in the definition of "Bank" in Clause (d) of Section 2 of Act No. 51 of 1993, a cooperative bank does not fall in the category of a "banking company". It is significant to point out that the legislature has given exhaustive definition of the "Bank" in Clause (d) which include 5 categories of the banks. A reference may be made of Regional Rural Bank. The legislature was, thus, conscious of the fact that besides the nationalised banks, State Bank of India and its subsidiaries and companies registered under the Companies Act doing banking business, the rural banks were also doing banking business. It choicely did not include cooperative banks which shows that the legislature did not want that the debt disputes between the cooperative bank and its members should be adjudicated by the Tribunal established under the Act though the amount of debt is more than 10 lacs of rupees.

We agree with the aforesaid reasons of the Division Bench of the Rajasthan High Court and hold that Parliament did not intend to include recovery of debts due to the cooperative bank within the ambit and sweep "of the 1993 Act, With great respect, we are unable to persuade ourselves to accept the view of the Division Bench of the Bombay High Court in the case of Shamrao Vithal Cooperative Bank Ltd. (supra), and the view of the Full Bench of the Bombay High Court in the case of Narendra Kantilal Shah (supra), that debts due to a cooperative bank would also come within the ambit and sweep of the 1993 Act. The conclusions in

the Division Bench and the Full Bench judgments of the Bombay High Court are based on Section 56 in Part V of the 1949 Act, but as we have held above, by Section 56 in Part V of the 1949 Act, the provisions of the 1949 Act only are made applicable to co-operative societies carrying on banking business and the said Section 56 of the 1949 Act cannot be construed to mean that the provisions of the 1993 Act are also applicable to co-operative societies carrying on a banking business. For the aforesaid reasons, we are also unable to persuade our self to accept the conclusion of the Full Bench of the Andhra Pradesh High Court in *M. Babu Rao (supra)*, that recovery of debt of Rs. 10 lakhs or more by a cooperative bank is within the exclusive jurisdiction of the Tribunal constituted under the 1993 Act. The first question of law referred to us is answered accordingly.

The second question referred to us is whether a recovery certificate can be issued for recovery of a debt of Rs. 10 lakhs or more payable to the cooperative bank if the cooperative bank does not come within the ambit and sweep of the 1993 Act. Mr. Sharad Verma, learned Counsel for the petitioner submitted that in *Mis. Unique Butyle Industries Private Ltd. (supra)*, it has been held that a recovery proceeding initiated by the U.P. Financial Corporation under the U.P. Public Moneys (Recovery of Dues) Act, 1972 is not maintainable in view of Section 34(2) of the 1993 Act. Sub-section (1) of Section 34 of the 1993 Act provides that save as otherwise provided in Sub-section (2), the provisions of 1993 Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the 1993 Act and Sub-section (2) of Section 34 of the 1993 Act provides that the provisions of the 1993 Act or the Rules made there under shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948, the State Financial Corporations Act, 1951, the Unit Trust of India Act, 1963, the Industrial Reconstruction Bank of India Act, 1984 and the Sick Industrial Companies (Special Provisions) Act, 1985. In the said Sub-section (2) of Section 34 of the 1993 Act, the U.P. Public Moneys (Recovery of Dues) Act, 1972 is not mentioned. The U.P. Financial Corporation is a financial institution for purposes of the 1993 Act and the debts due to the U.P. Financial Corporation, therefore, can be recovered under the 1993 Act. The U.P. Financial Corporation is also governed by the State Financial Corporation Act, 1951, which is one of the Acts mentioned in Sub-section (2) of Section 34 of the 1993 Act but the U.P. Public Moneys (Recovery of Dues) Act, 1972 is not one of the Acts mentioned in Sub-section (2) of Section 34 of the 1993 Act. Hence, construing the provisions of Section 34 of the 1993 Act, the Supreme Court held in the said case of *Unit Butyle Industries Pvt. Ltd. (supra)*, that the U.P. Financial Corporation may opt between proceedings under the Financial Corporation Act, 1951 or the 1993 Act for recovery of its dues but cannot proceed under the U.P. Public Moneys Recovery of Dues Act, 1972 as the said Act of 1972 is not one of the Acts saved from the application of the 1993 Act under Sub-section (2) of Section 34 of the 1993 Act. But in the instant case, as we have found, a

cooperative bank is not a bank for purposes of the 1993 Act and hence the provisions of the 1993 Act are not applicable to recovery of dues to the cooperative bank. Accordingly, Section 34 of the 1993 Act has no application to the cooperative bank and recovery of dues to the cooperative bank can be made through a revenue recovery certificate, if any law provides for recovery of such dues as arrears of land revenue.

Mr. Shrotri, learned Counsel for the Cooperative Bank submitted that the 1987 Adhiniyam provides for recovery of dues of a cooperative bank on account of a loan advanced under a socially desirable scheme to a party as arrears of land revenue. In support of his contention, he relied on Sections 2(b)(vi), 2(i) and 3(1) of the 1987 Adhiniyam. He also relied on the notification No. FI2-5-88-1AF-4, dated 5th November, 1988 issued u/s 2(i) of the 1987 Adhiniyam by the State Government declaring the socially desirable schemes which include schemes under which any banking company gives advances or loans to borrowers in priority sectors. He submitted that since the petitioner has been given advances/loans by a banking company as defined under the Adhiniyam, 1987 under a socially desirable scheme, the dues in the cash credit limit of the petitioner can be recovered by the Co-operative Bank which is still a banking company as arrears of land revenue by issuing a revenue recovery certificate.

Mr. Verma, learned Counsel for the petitioner, on the other hand, submitted that in Punjab National Bank, Betul v. Deviram and Ors. 1954 J LJ 742, a learned Single Judge of this Court has held that Section 3(1)(B) of the 1987 Adhiniyam covers the recovery of all loans which are under the State sponsored scheme and where the loan was neither under the sponsored scheme nor the State Government was a guarantor for the loan nor any subsidy was given by the State Government for the loan, it was not a loan covered by the 1987 Adhiniyam.

Sections 2(b)(vi), 2(i) and 3(1)(B) of the 1987 Adhiniyam are quoted below:

2. (b) "Banking company"; means-

(i)...

(ii)...

(iii)...

(iv)...

(v)...

(vi) a financing bank or a Central Society as defined in the Madhya Pradesh Co-operative Societies Act, 1960 No. 17 of 1961 excluding a Co-operative Land Development Bank.

... (i) "Socially desirable scheme" means a scheme notified as such by the State Government under which a banking company advances money to any person by

way of loan.

Recovery of certain dues as arrears of land revenue.-

(1) Where any person is a party-

(A)...

(B) to any agreement relating to loan advance or grant given to him or relating to payment of price of goods sold to him by a banking company or a Government Company under a State sponsored scheme or as the case may be, under a socially desirable scheme; or

(C)...

(D)...

fails to comply with the terms of the agreement then-

(a) in the case of the State Government such officer as the State Government may by notification authorise in his behalf;

(b) in the case of a Corporation or a Government Company, the Managing Director thereof by whatever name called; and

(c) in the case of banking company, the local agent thereof by whatever name called,

may send a certificate in such form as may be prescribed, and consistent with the provisions of Sub-section (2) of Section 4, to the Collector of the district in which such person normally resides or carries on business or owns property, or to such other subordinate officer of the Collector, as the State Government or the Collector may, by an order, specify in this behalf, mentioning the sum due from such person and requesting that such sum together with the cost of proceedings and interest on the sum due at the rate specified in the agreement, up to the date of recovery, be recovered as if it were an arrear of land revenue:

Provided that a certificate issued under this sub-section may be withdrawn by the authority issuing such certificate at any time:

Provided further that the cost of proceedings shall always be calculated at the rate of three per cent of the principal sum to be recovered.

It will be clear from the definition of "banking company" in Section 2(b)(vi) of the 1987 Adhiniyam quoted above, that "a financing bank" or "a society" as defined in the M.P. Cooperative Societies Act, 1960 excluding a Cooperative Land Development Bank is a "banking company" for the purpose of the 1987 Adhiniyam. Section 2(d-i) of the M.P. Co-operative Societies Act, 1960 defines "a financing bank" to mean a society the object of which includes the creation of funds to be lent to other societies or its individual members and includes land mortgage bank and State Co-operative Bank. It is not in dispute before us that

the Co-operative Bank in the present case namely Citizen Cooperative Bank is covered under the said definition of "a financing bank" in Section 2(i) of the M.P. Co-operative Societies Act, 1960. It will be further clear from Section 2(i) of the 1987 Adhiniyam quoted above that a "socially desirable scheme" means a scheme notified as such by the State Government under which a "banking company" advances money to any person by way of loan. By aforesaid notification, dated 5th November, 1988, the State Government has declared various schemes under which a banking company or a Government Company advances loans to borrowers in the priority sectors as socially desirable schemes. Thus, if the co-operative bank has advanced loan to the petitioner as a borrower in any priority sector, this will be loan advanced under a socially desirable scheme.

A reading of Section 3(1)(B) of the 1987 Adhiniyam quoted above shows that where "any person is a party to any agreement relating to loan advanced or grant given to him by a "banking company" or "a Government Company" under a State Sponsored Scheme or as the case may be under a socially desirable scheme and such a person fails to comply with the terms of the agreement, then the local agent of the Banking Company may issue certificate in such form as may be prescribed to the Collector of the district in which such person normally resides or carries on business or owns property, or to such other subordinate officer of the Collector as the State Government or the Collector may by order specify in that behalf mentioning the sum due from such person and requesting that such sum together with cost of proceedings and interest on the sum due at the rate prescribed up to the date of recovery, be recovered as if it were an arrear of land revenue. Hence dues on account of loans advanced by a Cooperative Bank to a borrower in priority sectors can be recovered as arrears of land revenue through a revenue recovery certificate in accordance with Section 3 of the 1987 Adhiniyam not only under a State Sponsored Scheme but also under a socially desired scheme. The contention of petitioner that revenue recovery certificate can be issued only for recovery of dues of the State Government under a State Sponsored Scheme, is thus not correct. The second question of law referred to us is answered accordingly.

Having answered the two questions referred to us by the learned Single Judge, we now remit the matter back to the learned Single Judge to decide the writ petitions in accordance with the opinion expressed by us on the two questions in this order after considering the facts of this writ petition.