HIGH COURT OF GUJARAT (*D.B.*)

ISSAN OVERSEAS LTD & 5 ORS
Versus
ABHYUDAY CO-OPERATIVE BANK LTD & 3 ORS

Date of Decision: 26 September 2012

Citation: 2012 LawSuit(Guj) 990

Hon'ble Judges: Bhaskar Bhattacharya, J B Pardiwala

Eq. Citations: 2013 4 GLR 3613

Case Type: Special Civil Application

Case No: 7338 of 2010

Subject: Banking, Constitution

Acts Referred:
Constitution Of India Art 226, Art 12
Reserve Bank Of India Act, 1934 Sec 22, Sec 39, Sec 3
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 Sec 13(2), Sec 14, Sec 17
Gujarat Co-Operative Societies Act, 1961 Sec 2(19), Sec 115A(1), Sec 163(1), Sec 163, Sec 20, Sec 2, Sec 115A, Sec 17(1), Sec 37, Sec 163(2), Sec 17, Sec 17(4)

Advocates: Amar Bhatt, Anshin H Desai, Nanavati Associates, P K Jani, Rasesh Rindani, S N Soparkar, Vishwas K Shah

Cases Referred in (+): 18

J. B. Pardiwala, J.

[1] By way of this petition under Article 226 of the Constitution, the petitioner No.1, a debtor and a defaulter of a Cooperative Bank, has prayed for an appropriate writ, order or direction to quash and set aside order dated 8.10.2008 passed by the Registrar, Cooperative Societies, Gujarat State, Gandhinagar in exercise of his powers conferred under section 115A(1) read with section 17 of the Gujarat Cooperative Societies Act, 1961, whereby resolution passed by the Manekchawk Cooperative Bank Limited, Ahmedabad in its Special General Meeting held on 11.8.2008 in respect of its merger with the respondent No.1 bank came to be approved and thereby, order of merger of

the Manekchawk Cooperative Bank Limited, Ahmedabad with the respondent No.1 bank came to be passed subject to certain terms and conditions.

[2] The case made out by the petitioners in this petition may be summerised as under:

2.1 On 12.4.2001, the petitioner No.1 was granted financial facilities by the Manekchawk Cooperative Bank Limited, a State Cooperative Bank registered under the Gujarat Cooperative Societies Act, 1961 (for short "Act, 1961) in the form of cash credit limit upto Rs.1.50 crore.

2.2 As the petitioners defaulted in making the payment to the bank, the Manekchawk Bank instituted arbitration suit on 13.1.2003 against the petitioner before the learned Board of Nominees under the Act, 1961 for recovery of Rs.1,77,04,503/- with interest at the rate of 20.75% per annum as per the contract between the parties.

2.3 On 23.6.2003, the learned Board of Nominees passed a decree in favour of the Manekchawk bank.

2.4 On 20.9.2003, the petitioners preferred Appeal No.1270 of 2003 before the Cooperative Tribunal against the decree passed by the Board of Nominees.

2.5 It is the case of the petitioners that they have moved a pursis in the aforesaid appeal for withdrawal, but till this date, no orders have been passed and the appeal as on today is still pending on the file of the Cooperative Tribunal.

2.6 It is also the case of the petitioners that the restoration application No.7 of 2009 was preferred before the Board of Nominees and the said application came to be rejected by the Board of Nominees on 23.2.2010 on the ground of pendency of appeal before the Cooperative Tribunal.

2.7 It is also the case of the petitioners that being aggrieved and dissatisfied with the order dated 23.6.2003 passed in Lavad Suit No.182 of 2003 and order dated 23.3.2010 passed in the Restoration Application No.7 of 2009 by the Board of Nominees, Appeal No.110 of 2010 is pending before the Gujarat Cooperative Tribunal, Ahmedabad.

2.8 According to the petitioners, a circular dated 16.2.2005 came to be issued by the Registrar, Cooperative Societies, Government of Gujarat for merger/amalgamation of Weak/Unviable Urban Cooperative Banks with economically strong banks.

2.9 The Board of Directors of the Manekchawk Bank in its meeting dated 14.10.2006 approved the proposal for merger with other financially sound bank.

2.10 According to the petitioners, thereafter, the Manekchawk Bank Limited got merged with the Abhyoday Cooperative Bank Limited i.e. the respondent No.1 and a Multi State Cooperative Bank registered under Multi State Cooperative Societies Act, 2002 (for short "Act, 2002") by virtue of order dated 8.10.2008 passed by the Registrar, Gujarat Cooperative Societies under section 115A(1) and section 17 of the Act, 1961.

2.11 It is the case of the petitioners that after the order of merger, the respondent No.1 bank issued a notice dated 23.1.2009 to the petitioners under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI") and called upon the petitioners to deposit a sum of Rs.3,50,32,281/- due and payable as on 3.12.2008.

2.12 In response to the demand notice dated 23.1.2009 issued by the respondent No.1 under SARFAESI, the petitioners preferred objections dated 4.2.2009, which came to be rejected vide order dated 14.2.2009.

2.13 It is also the case of the petitioners that thereafter, a letter dated 28.3.2009 was addressed to the respondent No.1 redressing its grievance and demanding copies of few documents, more particularly, described in the said letter.

2.14 The respondent No.1 bank thereafter, issued notice informing the petitioners that it proposed to take steps under section 13(4) of the SARFAESI. The petitioners thereafter, preferred Special Civil Application No.3978 of 2009 challenging notice dated 23.1.2009 as well as notice dated 7.4.2009 issued by the respondent No.1 bank. The aforesaid writ petition was adjudicated by the learned single Judge of this Court and vide order dated 24.4.2009, rejected the same having found no substance.

2.15 It is also the case of the petitioners that the respondent No.1 thereafter, filed an application under section 14 of the SARFAESI before the learned Metropolitan Magistrate in April, 2010, which is still pending with the Chief Metropolitan Magistrate, Ahmedabad.

2.16 It is in the aforesaid factual background that the petitioners have thought fit to challenge the merger of the Manekchawk Bank from whom the petitioners had availed cash credit facilities with the respondent No.1 bank, which is a Multi State Bank substantially on the ground that merger of a Cooperative Bank constituted

under State mechanism with a Multi State Cooperative Bank is dehors and contrary to the statutory provisions and hence, null and void.

Case of the respondent No.1 bank as made out in its Affidavit-in-reply.

[3] Upon merger of the Manekchawk Co-operative Bank with the respondent bank, the respondent bank having stepped into the shoes of the Manekchawk Bank, initiated recovery proceedings against the borrowers/defaulters of erstwhile the Manekchawk Bank. In the instant case, the respondent bank initiated recovery proceedings against the petitioner company under the provisions of 13(2) of the Securitization Act, to which the petitioner had filed objections. The said objections were replied by the respondent bank and since the petitioners failed to make payment of the outstanding dues, the respondent bank resorted to proceedings under Section 14 of the Securitization Act. It is at that stage, the petitioners filed the present petition challenging the order dated 8.10.2008 passed by Ld. Joint Registrar (Audit) Co-operative Societies, Gandhinagar, Gujarat sanctioning the merger of the Manekchawk Bank with the respondent bank.

3.2 Insofar as merger of the Manekchawk Bank with the respondent bank is concerned, it is submitted that since many small urban co-operative banks were facing financial difficulties owing to which they either became weak and / or unviable banks, the Reserve Bank of India (RBI) formulated guidelines for merger / amalgamation of such banks with other strong banks / entities. A copy of the said guidelines is produced by the respondent no.1 along with his reply at Annexure-R/2 at pg.151, wherein the opening clause of the guidelines reads as under: -

"With a view to facilitating consolidation and emergence of strong entities and providing an avenue for non-disruptive exit of weak / unviable entities in the co-operative banking sector, it has been decided to frame guidelines to encourage merger / amalgamation in the sector."

3.3 Pursuant to such guidelines, the Registrar, Co-operative Societies, State of Gujarat also issued a circular dated 16.2.2005 concerning merger / amalgamation of weak / unviable urban co-operative bank(s) with economically strong banks.

3.4 The Manekchawk Bank was desirous of merging with the respondent bank, and accordingly, after complying with all legal procedure required for such merger, the Board of Directors of both the Banks passed necessary resolutions for such merger and a Memorandum of Understanding (MOU) dated 29.1.2008 came to be executed between the Manekchawk Bank and the respondent bank for merger of the former bank with the respondent bank, subject to obtaining appropriate permissions from respective authorities for such merger.

3.5 Thereafter, the Manekchawk Bank wrote to the State Level Task Force for Urban Co-operative Banks a Department of RBI vide letter dated 28.2.2008 to help and guide the bank for further action as may be required for smooth merger. Thereafter, the RBI, after examining the proposal of merger, granted its No Objection Certificate (NOC) on 15.5.2008. Pursuant to the said NOC, the Central Government, Deptt. Of Agriculture and Co-operation also issued NOC subject to following the instructions/circulars of the RBI issued from time to time and compliance of provisions of concerned State Co-operative Societies Act.

3.6 The Manekchawk Cooperative Bank Ltd. had also published a "public notice" in two newspapers i.e. in Gujarati as well as English calling upon the members, the depositors, the creditors and any other person interested with the working of the bank to submit their objections, if any in writing regarding the Scheme of Merger. It is given to understand that the petitioners had not objected and/or opposed or had given any response in writing to such public notice. Therefore, it would not be open for the petitioners to oppose and/or object to the merger as he is estopped from doing so.

3.7 That consequent upon the NOCs issued by RBI and the Central Government, the Registrar, Co-operative Societies, Gujarat vide its order dated 8.10.2008 granted sanction to the merger of the Manekchawk Bank with the respondent bank. Since upon such order, the name/registration of the Manekchawk Bank was required to be deleted from the record of the District Registrar, Ahmedabad, the respondent bank vide communication dated 30.3.2009 wrote to the District Registrar (Co-operative Societies), Ahmedabad to delete the registration of the Manekchawk Bank, pursuant to which, such deletion was intimated by the Office of the District Registrar by letter dated 15.4.2009. Hence, since thereafter, name of the Manekchawk Co-operative Bank Ltd. has been struck off from the register of the District Registrar, Ahmedabad.

3.8 The merger between the Manekchawk Bank and the respondent bank has been effected after obtaining all the requisite permissions and no objections from all the concerned authorities including the RBI and while granting such permissions/no objections, the respective authorities have scrutinized the terms of merger and having found them to be in larger interest of both the banks, the same have been granted. It is the case of the respondent No.1 bank that such merger, approved by the authorities, is a commercial decision that has been taken by the concerned banks after considering all aspects. Therefore, such decision falls squarely within the predominance of the two banks to which, the petitioners could not have any grievance and/or objection. Therefore, considering the above facts and circumstances, the petition is required to be dismissed with costs.

Stance of the respondent No.2 RBI.

[4] The learned counsel appearing for the respondent No.2 submitted that the petition is not maintainable against the RBI, neither in law nor on facts of the case. The RBI has not violated any fundamental, legal or statutory right of the petitioners. As such, the petitioners have no locus standi to file the petition against the RBI and seek any relief as prayed for in this petition or otherwise. Therefore, the present petition against the RBI is not maintainable, and deserves to be dismissed.

4.2 The No Objection Certificate issued by the RBI dated 15/05/2008 is a policy decision of the RBI. The petitioners cannot call in question the policy decision taken by the RBI, which has been taken in the bona fide interests of the banking system and in public interest. The same could not be compromised with for the benefit of a selected few.

4.3 The petitioners are the debtors of erstwhile the Manekchawk Co-operative bank and the proceeding initiated against them for recovery of the outstanding dues is pending. The present writ petition is only to delay the recovery proceeding. Hence the petition is liable to be dismissed.

4.4 In terms of section 115A of the Gujarat Co-operative Societies Act the order for the Scheme of compromise or arrangement or of amalgamation or reconstruction of the bank may be made only with the previous sanction in writing of the Reserve Bank. Before granting sanction by the RBI no notice is required to be sent to the borrowers of the bank for the proposed amalgamation. Hence the submission of the petitioners that no individual notice were received by the petitioners is untenable and unwarranted. The petition therefore, deserves to be dismissed on this ground.

4.5 The NOC issued by the RBI to the proposed amalgamation is not contrary to any of the State or Central legislations. NOC was issued by the RBI in public interest and more particularly in the interest of the depositors.

4.6 The petitioners have failed to make out any case against the answering respondent for the interference of this court. The larger interest of the public and the banking system as well as provisions of the Law of the land have been taken into consideration while issuing NOC to the proposed amalgamation. Hence the petitioners have no cause of action to file the present petition against the RBI. The petitioners are not entitled to invoke the extra ordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

4.7 The No objection for the proposed merger was issued by the RBI on 15/05/2008. The present petition challenging the merger was filed in 2010 i.e.

after 2 years of giving No Objection. No reasons have been assigned in the Petition for the inordinate delay in filing the Petition. Hence the Petition is liable to dismissed on this ground alone.

4.8 Even on the principles of "Salus Popali Est Suprema Lex" which means "Regard for the Public Welfare is the Highest Law" the petition is liable to be dismissed in the interest of depositors.

4.9 The RBI is a body corporate constituted under section 3 of the Reserve Bank of India Act, 1934 to regulate the issue of Bank note and keeping of the reserves with a view to securing monetary stability in India and to operate the currency and credit system of the country to its advantage. The RBI is the sole note issuing authority. The Bank Notes issued by the RBI are legal tender under sections 22 and 39 of the Reserve Bank of India Act. The RBI regulates and controls the money supply in the country. The RBI also acts as banker to the Government of India and all State Governments and also manages their public debts. The RBI regulates and supervises commercial banks and cooperative banks in the country. The RBI exercises control over the volume of credit, the rate of interest chargeable on loans and advances and deposits in order to ensure economic stability. The RBI exercises various powers and discharges various statutory functions under Foreign Exchange Management Act, 1999, Banking Regulation Act, 1949, Reserve Bank of India Act, 1934 etc.

4.10 The Manekchawk Co-op. Bank Ltd. was registered as a co-operative society under the Gujarat Co-operative Societies Act, 1961 on 25.02. 1970 and was issued banking licence on 02.01.1980 to conduct banking business in India. The area of operation of the bank was confined to Ahmedabad, Anand and Kheda of the State of Gujarat. It had 10 branches and a staff of 97 employees. The bank had 9984 regular members as on March 31, 2007 with deposits of Rs. 3105.06 lakh and advances of Rs. 2024.63 lakh. It had incurred a net loss of Rs. 217.96 lakh during the year 2006 07.

4.11 The Abhyuday Cooperative Bank Limited, Mumbai is a licensed scheduled co-operative bank registered on January 16, 1964 as a society and was issued banking licence to conduct banking business in India on April 06, 1981. The bank was included in Second schedule of the RBI Act 1934 on September 01, 1988. The bank was registered under the Multi State Cooperative Societies Act, 2002 on January 11, 2007. The area of operations of the bank is Maharashtra and Karnataka and its staff strength is 1401 with 117139 members as on March 31, 2007. Based on the findings of the RBI inspection was carried on March 31, 2006 and the bank was classified in Grade I category. The bank is financially sound. The deposits and

advances of the bank stood at Rs. 215498.01 lac and Rs. 128395.10 lac as on March 31, 2007. The bank recorded a net profit of Rs. 1874.85 lac during 2006 2007.

4.12 The Abhyuday Cooperative Bank Limited, Mumbai vide its letter MD 1417/(C)/1340/2007-08 dated February 4, 2008 had submitted a proposal for merger of the Manekchawk Co-op. Bank Ltd., Ahmedabad with itself. The proposal had been simultaneously submitted to the RCS, Gujarat and CRCS, New Delhi. The Abhyuday Co-operative Bank acquired the Citizens Credit Co-operative Bank Ltd., Pune and the merger had come into effect from June 03, 2006. In the past, the RBI had given NOC for merger of the Janatha Co-operative Bank having six branches and the Shree Krishna Sahakari Bank Ltd., Vadodara, with the Abhyuday Co-operative Bank Ltd. After the merger of the Janatha CBL and the Shree Krishna Sahakari Bank Ltd., the Abhyuday Bank has a network of 59 branches. After the present merger of the Manekchawk Co-operative Bank with (10 branches) with the Abhyuday Co-operative Bank the tally of total branches comes to 69. The respondent No.1 bank is a multi state co-operative bank. The Board of Directors of the latter bank has approved the proposal for merger of the transferor bank in their meeting held on December 18, 2007 and the General Body on December 10, 2007. The Board of Directors of the transferor bank had approved the proposal for merger with a strong bank on October 14, 2006. The proposal of merger with the Abyudaya Co-operative Bank has also been approved in the AGM held on July 29, 2007. The CRCS, New Delhi vide their letter dated January 11, 2007 and RCS, Gujarat vide their letter dated May 8, 2007 had given No Objection Certificate to the Abyudaya Co-operative Bank to extend its area of operation in the state of Gujarat.

4.13 Section 115A of the Gujarat Co-operative Societies Act provides that order for the Scheme of compromise or arrangement or of amalgamation or reconstruction of the bank may be made only with the previous sanction in writing of the Reserve Bank. If the transferor bank and transferee bank and its administrators under the concerned Acts are agreeable for amalgamation, then the answering respondent would consider the proposal on merit leaving the question of compliance with relevant statutes to the Administrators of the Acts. The answering respondent is concerned with the financial aspects of both banks and the interest of the depositors as well as the stability of the financial system. Accordingly the proposal for merger of the Manekchawk Co-operative Bank with the Abhyuday Co-operative Bank was received from the Abhyuday Co-operative Bank. The CRCS&RCS, the administrators under the respective statutes have also given their consent for the proposed merger. The proposal was considered strictly as per the guidelines dated

02/02/2005 (Copy at Annexure "A" hereto) issued by the RBI for merger/amalgamation of the Urban Co-operative Banks. Taking into account the financial position of both banks and interest of the depositors and public at large, the RBI vide letter dated 15/05/2008 issued No Objection to RCS Gujarat for the proposed merger subject to certain conditions/observations mentioned therein.

4.14 Consequent upon the merger, all the rights, liabilities, assets, and properties of the transferor bank stood transferred to acquirer bank from the date of merger.

4.15 The petitioners, being the debtors have no locus standi to question the legality, validity and correctness of the Scheme of Amalgamation of the Manekchawk Co-operative bank with the Abhyuday Co-operative bank as the same was sanctioned in public interest and in the interest of the depositors of the Manekchawk Co-operative Bank. The No Objection issued by the RBI to the proposed amalgamation is in no manner contrary to the provisions of the Gujarat co-operative Societies Act 1961 or the Multi State Cooperative Societies Act 2002.

4.16 Consequent upon the merger of the Manekchawk Co-operative Bank with the Abhyuday Co-operative Bank, the Manekchawk Co-operative Bank ceases to exist in its functions and operations. All rights and liabilities including right to sue are now vested with the transferee bank i.e the Abhyuday Co-operative Bank. Hence it is for the Abhyuday Co-operative Bank to recover the outstanding dues of the erstwhile the Manekchowek Co-operative Bank.

4.17 The grounds of challenge are without any legal basis. In terms of section 115A of the Gujarat Co-operative Societies Act the order for the Scheme of compromise or arrangement or of amalgamation or reconstruction of the bank may be made only with the previous sanction in writing of the Reserve Bank. Being the regulator in the financial sector the answering respondent is concerned with issuing sanction to the Scheme of amalgamation submitted for consideration. If the transferor bank and the transferee bank and its administrators are agreeable for merger /amalgamation, the role of the answering respondent is only to consider the proposal on merit leaving the question of compliance with relevant statutes to the administrators of the Act. The role of the answering respondent is confined to examine only to the financial aspects and the interest of the depositors as well as the stability of the financial system. Accordingly the merger proposal received form the Abhyuday Co-operative Bank was examined by the answering respondent in the light of the financial aspects of both banks and the guidelines on merger/amalgamation of the Urban Co-operative Banks and issued No Objection to the proposed merger of the Manekchawk Co-operative Bank with the Abhyuday Co-

operative bank subject to the terms and conditions mentioned in the No Objection. Hence all the grounds mentioned in the petition are liable to be rejected.

Stance of the respondent No.4 Central Registrar of Cooperative Societies.

[5] The petitioners are defaulters and therefore, are not entitled to any discretionary relief under Article 226 of the Constitution.

5.2 The question of law involved is as to whether there is any power, authority and jurisdiction with a Cooperative Bank constituted under the Gujarat Cooperative Societies Act to merge with the Bank constituted under the Multi State Cooperative Act, 2002?

5.3 The Urban Cooperative Banks function under dual control and regulation. They are regulated by the RBI and by the concerned Registrar of the Cooperative Societies. The Central Registrar of Cooperative Societies (CRCS)/Registrar of Cooperative Societies (RCS) undertake registration and management related issues of the Urban Cooperative Banks registered under the provision of the MSCS Act, 2002 and State Cooperative Societies Acts respectively.

5.4 The Reserve Bank of India (RBI) guidelines dated 2.2.2005 (S/1) specify that a cooperative bank could merge only with an another cooperative bank situated in the same state or with other cooperative bank registered under MSCS Act, 2002. The Manekchawk Cooperative Bank was functioning under the Gujarat Cooperative Societies Act, 1961 and the Registrar, Cooperative Societies of Gujarat had given its consent for the said merger vide its order dated 8.10.2008. The RBI had also accorded its approval vide its order 15.5.2008. The acquirer bank i.e. the Abhyuday Cooperative Bank Ltd. is a Multi State Cooperative Bank with area of operation in the state Maharashtra, Karnataka and Gujarat. Since the area of operation of the acquier bank extends to Gujarat, the said merger could not be said to be in violation of provisions of the MSCS Act, 2002. The contention of the petitioners that there is no power, authority and jurisdiction for the merger of a cooperative bank constituted under the state mechanism with a multi-state cooperative bank is devoid of any merit.

5.5 Even though the MSCS Act, 2002 do not provide taking over of a State Cooperative Society, the MSCS Act, 2002 has been enacted by the Parliament to consolidate and amend the laws relating to the cooperative societies with objects not confined to one state and serving the interest of the members in more than one State. The Central Registrar of Cooperative Societies grants No Objection to such mergers on the condition that the RBI's guidelines and the respective State Cooperative Societies Acts are duly complied.

Legal contentions on behalf of the petitioners.

[6] Mr. Vishwas K. Shah, the learned counsel appearing for the petitioners vehemently submitted that there is no statutory provision under the Act, 2002, which permits a Multi State Cooperative Society to take over the assets and liabilities in whole or in part of any Cooperative Society registered under the Act, 1961. According to Mr. Shah, the merger of the Manekchawk Cooperative Bank with the respondent No.1 bank is ultra vires the provisions of the Act, 1961 as well as 2002. Section 17 of the Act, 1961 as well as section 17 of the Act, 2002 if read with section 115A of the Act, 1961 does not empower the authority to accord sanction to such a merger.

6.2 Mr. Vishwas K. Shah, the learned counsel appearing for the petitioners vehemently submitted that section 17A of the Act, 1961 itself empowers the Registrar to direct amalgamation and reorganization of societies in public interest. According to Mr. Shah, under section 17A of the Act, 1961, if the Registrar is satisfied that it is essential in the public interest or in the interest of cooperative movement or for the purpose of securing proper management of any society that two or more societies should be amalgamated than notwithstanding anything contained in section 17, the Registrar may, after consulting such Federal Society, provide for the amalgamation of these societies into a single society. The sum and substance of Mr. Shah's submission is that if the Manekchawk Cooperative Bank was weak enough to carry on its own business, then under such circumstances, the Registrar under section 17A could have merged the Manekchawk Cooperative Bank with any other financially sound Cooperative Bank regulated under the Act, 1961 in public interest, but in no circumstances, the Registrar could have sanctioned amalgamation of a Cooperative Bank with a Multi State Cooperative Bank under the provisions of section 17 of the Act, 1961.

6.3 Mr. Shah invited our attention to a circular issued by the Reserve Bank of India dated 2.2.2005 providing for guidelines for merger/amalgamation of Urban Cooperative Banks, wherein it has been stated as under:

"Although, there are no specific provisions in the State Acts or the Central Act for the merger of a Cooperative Society under the State Acts with that under the Central Act, it is felt that, if all concerned including administrators of the concerned Acts are agreeable to order merger/amalgamation, the RBI may consider proposals on merits leaving the questions of compliance with relevant statutes to the administrators of the Acts. In other words, Reserve Bank will confine its examination only to financial aspects and to the interest of depositors as well as the stability of the financial system while considering such proposals."

6.4 Relying on the circular of the Reserve Bank, Mr. Shah submitted that the highest bank of this country has accepted in unequivocal terms that there is no provision in law, which permits a Cooperative Bank to merge with a Multi State Cooperative Bank. Mr. Shah also submitted that even the 97th Amendment Act, as proposed, would not save the situation as no amendments have been carried out or effected in the local law till this date in tune with 97th Amendment Act. Article 243(ZT) of the 97th Amendment Act specifies that any provision of any law relating to Cooperative Societies in force in a State immediately before the commencement of the Constitution (Ninety Seventh Amendment), Act 2011, which is inconsistent with the provisions of amendment, shall continue to be in force until amended or repealed or until the expiration of one year from such commencement, whichever is less. According to Mr. Shah, as 97th amendment came into force on 15.2.2012, the same would not be applicable in a case of merger of 2008. Mr. Shah in support of his contention relied on the following case law.

Dr. D.C. Wadhwa Vs. State of Bihar, 1987 AIR(SC) 579.

Iqbal Singh Narang and Ors. vs. Veeran Narang, 2012 2 SCC 60.

Supriyo Basu Vs. West Bengal Housing Board, 2005 6 SCC 289.

U.P. State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey and others, 1999 1 SCC 741.

Achutyanand Singh Vs. State of Bihar, 1971 AIR(SC) 2001.

H. Puttappa and Ors Vs.The State of Karnataka and Ors, 1978 AIR(Kar) 148.

Harkha Bhagat and Anr. Vs. Asst. Registrar, 1968 AIR(Pat) 211.

Raj Rikh Choube and Anr Vs. State of Bihar and Ors, 1972 AIR(Pat) 276.

the Govindpur Agricultural Credit Co-operative Society v. Asst. Registrar, Co-operative Societies, Balasore Circle, 1973 AIR(Ori) 148.

Legal contentions on behalf of the respondent No.1 Bank

[7] Mr. Kirtikant S. Nanavati, the learned senior advocate appearing for the respondent No.1 Bank vehemently submitted that this petition at the behest of a defaulter by itself is not maintainable. According to Mr. Nanavati, as on 31.1.2011, an amount of Rs.4,35,92,626/- was outstanding, while as on 29.3.2012, an amount of Rs.4,97,58,651/- still remains outstanding.

7.2 Mr. Nanavati further submitted that when no other members / depositors / creditors or any other person have challenged the merger, but have on the contrary acted in furtherance to the merger, it would not be proper nor in the interest of justice to set aside the present merger at the behest of a defaulting borrower, when the only aim of the present defaulting borrower is to avoid repayment at any cost. The Petitioners have also not honoured the decree passed by the learned Board of Nominees under the Gujarat Co-operative Societies Act, which decree was passed prior to the merger.

7.3 Mr. Nanavati also submitted that the Court may interpret the provisions of law so as to give true effect to the merger with a view to prevent the miscarriage of justice.

7.4 Mr. Nanavati further submitted that in Section 17 of the Multi State Co-operative Societies Act, merger / amalgamation of any other co-operative society into a Multistate Co-operative Society is required to be read into, inasmuch as the entire provision is for amalgamation, etc. of Co-operative Societies.

7.5 Mr. Nanavati also submitted that the definition of the term "Co-operative Society as provided in Section 3 (g) would also include a co-operative society in any State, meaning thereby, a co-operative society registered under any State law. Therefore, Section 17 of the Multi State Act has to be construed liberally so as to read into it "Merger and taking over of liability / assets of any other co-operative society" by a Multi-state Co-operative Society.

7.6 Mr. Nanavati further submitted that so far as the Gujarat Act is concerned, Section 17 permits amalgamation/ merger of two societies. Section 17 (1) (a) permits amalgamation of one society with another society. The Section 17 (1) (b) permits transfer of assets and liabilities of one society into another society. Society is defined in Section 2 (19) of the Gujarat Act. Section 2 starts with the phraseology "In this Act, unless the context otherwise requires, ------ "(19) Society means "a co-operative society registered or deemed to be registered under this Act". In view of the opening phrase of Section 2, the meaning of the word "society" has to be considered and construed Contextually. In view of such contextual construction, while interpreting Section 17 of the Gujarat Act, the word "society" has to be interpreted in the context of purpose of Section 17 i.e. Amalgamation of one society with another society. It is submitted that the society may be a co-operative society governed by the Gujarat Act or by the Central Act, i.e. Multistate Act.

7.7 Mr. Nanavati lastly, submitted that assuming for the moment without admitting that the merger of the Manekchawk Cooperative Bank with the respondent No.1 Bank could not be termed as in accordance with law and is illegal, even then, this Court in exercise of its writ jurisdiction under Article 226 of the Constitution may refuse to interfere and grant the relief as prayed for. Mr. Nanavati's submission is that in a given case like the present one, mere infraction of law may not be sufficient for a Court to set at naught a merger, which has already taken its effect in larger public interest only because petitioners being defaulters is affected in some manner or the other. Mr. Nanavati therefore, urged to dismiss this petition with costs. In support of his contentions, Mr. Nanavati relied on the following case law.

Smt. Pushpa Devi & Ors vs Milkhi Ram, 1990 2 SCC 134.

Printers (Mysore) Ltd vs Asstt. Commercial Tax Officer, 1994 2 SCC 434.

State of Rajasthan Vs. Prakash Chand and others, 1998 1 SCC 1.

Legal contentions on behalf of the respondent No.2 RBI.

[8] Mr. S.N. Soparkar, the learned senior advocate appearing with Mr. Amar N. Bhatt, the learned advocate for the respondent No.2 submitted that the petition is not maintainable against the RBI neither in law nor on facts, as the RBI has not violated any fundamental, legal or statutory right of the petitioners. According to Mr. Soparkar, the No objection given by the RBI dated 15.5.2008 to the merger could be termed as a policy decision of the RBI and such a policy decision could not be called in question in the bonafide interest of the banking system and also in public interest. Mr. Soparkar also submitted that consequent upon the merger of the Manekchawk Cooperative Bank with the Abhyuday Cooperative Bank, the State Cooperative Bank ceased to exist and all rights and liabilities including right to sue stood vested with the transferee bank i.e. the Abhyuday Cooperative Bank. Hence, it is for the Abhyuday Cooperative Bank to recover the outstanding dues of the erstwhile the State Cooperative Bank. Mr. Soparkar Submitted that it is practically impossible to reverse the situation. The State Cooperative Bank was a loss making bank and was financially very weak. The Multi State Cooperative Bank is financially a strong bank. If the State Cooperative Bank would have been allowed to continue with the banking business in the manner in which it was functioning, it would have probably gone in liquidation and in that case, the depositors would have received only Rs.1 lac under BICGC Act and for their balance amount, they would have had to stand in a queue. According to Mr. Soparkar, it could have had a cascading effect on other banks and banking sector. Instead with the transfer of assets and liabilities to the Multi State Cooperative Bank, the depositors of

the State Cooperative Bank are fully protected. The RBI, therefore, in larger public interest granted its no objection to the transfer of assets and liabilities of the State Cooperative Bank with a Multi State Cooperative Bank taking into consideration that there is no express legal bar on such transfer from a local bank to a Multi State Bank and leaving the statutory compliances under the Act of 1961 and Act of 2002 to the regulators under the said two Acts. According to Mr. Soparkar, the sanction granted by the RBI and the RCS was in furtherance to the objects and purpose of the Banking Regulation Act, 1949. It was also submitted that both the statutes are required to be read as ongoing statutes and along with the Banking Regulation Act, 1949, particularly in the context of change in nature of banking activities and growth and emergence of new concepts in banking sector, the petition deserves to be dismissed.

8.2 Having heard the learned counsel for the respective parties and having gone through the materials on record, in our opinion, the following questions fall for our consideration in this petition.

Whether a writ petition under Article 226 of the Constitution of India would be maintainable against a Cooperative Society?

Whether the Gujarat State Cooperative Act, 1961 permits a society registered under its Act to merge with a Multi State Cooperative Society registered under the Multi State Cooperative Societies Act, 2002?

Whether there is any provision under the Multi State Cooperative Societies Act, which empowers a Multi State Bank to take over or amalgamate with a State Cooperative Bank?

Whether section 2(19) of the Act of 1961, which defines the required term 'Society' is to be given a contextual interpretation in view of the opening words to section 2, namely "unless the context otherwise requires" and thereby, read Multi State Cooperative Society into the definition of the term society as provided in section 2(19) of the Act of 1961?

Whether mere illegality of an action by itself would be enough for the Court to interfere in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India if it is found that any such intervention would cause inconvenience or hardship to a sizeable section of the public, who have acted bonafide or were in any way responsible for the illegality pointed out by the petitioners herein?

[9] We shall now proceed to answer the questions referred to above.

[10] The first question as regards maintainability of this writ petition against a Cooperative Society has fallen for our consideration in light of the contention that the respondent No.1 Bank being not "State" within Article 12 of the Constitution, no writ petition would be maintainable. The respondent No.1 bank is a Multi State Bank registered under Multi State Cooperatives Act, 2002, which is a Central piece of legislation. Under section 17 of the Act, 2002, a Multi State Cooperative Society may, by resolution passed by majority and not less than 2/3rd of the members transfer its assets and liabilities in whole or in part to any other Multi State Cooperative Society or Cooperative Society, divide itself into two or more Multi State Cooperative Societies and divide itself into two or more Cooperative Societies. Section 17 is conspicuously silent so far as the power of a Multi State Cooperative Society to take over a State Cooperative Society registered under a State Act is concerned. The complaint in this petition is that there being no provision under the Act, 2002, the respondent No.1 in flagrant disregard to the provisions of the Act, 2002, took over a State Cooperative Bank registered under the Act of 1961 and thereby, committed gross illegality. We are of the view that even if a society could not be characterized as a "State" within the meaning of Article 12, even so, a writ would lie against it to enforce statutory provisions governing such society as held by Supreme Court in Supriyo Basu that if it is established that the mandatory provision of the statute has been violated, a writ petition would be maintainable even against a Cooperative Society.

[11] Reference may also be made to the observations made by the Supreme Court in Anadi Mukta Sadguru Trust Vs. V.R. Rudani, 1989 2 GLR 1357, wherein the Supreme Court has passed the following observations.

> "The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art.32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."
>
> Hence as a principle the issue of any order or direction in the nature of mandamus cannot be denied on the ground that the body against which the writ is sought to be issued is not an 'authority' or 'agency' or 'instrumentality' of the State under

Article 12 nor it can be denied on the ground that the duty to be enforced is not imposed by the statute."

11.1 So far as the issue of maintainability is concerned, we also find merit in the submission of Mr. Shah that there is no inbuilt mechanism provided under the Act or the Rules for providing the remedy to challenge such merger. Therefore, if no remedy is available for setting at naught any illegal or irregular or arbitrary process undertaken by the Society, it would not be a case to deny the remedy to the petitioners in a petition under Article 226 of the Constitution.

11.2 Thus, we are not impressed by the preliminary objection raised on behalf of the respondents as regards maintainability of a writ petition under Article 226 of the Constitution of India against a Cooperative Society. We hold that the petition is maintainable.

[12] So far as question Nos.2 and 3 are concerned, they are interlinked. It has been conceded before us that there is no specific provision under the Act of 1961, which permits or empowers a State Cooperative Bank to merge with a Multi State Cooperative Bank and it is too obvious that when Act of 1961 came to be enacted, the Multi State Cooperative Societies Act, 2002 was not in force. In the same manner, it has also been conceded before us that section 17 of the Act of 2002 also does not empower a Multi State Bank to take over a State Cooperative Bank. Therefore, question Nos.2 and 3 are answered accordingly.

[13] So far as the 4th question is concerned, we have exhaustively dealt with this question in our decision rendered today in LPA No.383 of 2010. We rely on the observations made by this very Bench to answer question No.4.

"Section 2(17) defines the term 'Registrar', which means 'a person appointed to be the Registrar of Cooperative Societies under this Act: and includes, to the extent of the powers of the Registrar conferred on any other person under this Act, such person and includes an Additional or Joint Registrar'. Bare reading of both the definitions would suggest that the Legislature has consciously used the words 'under this Act'. We find merit in the submission of Mr.Vyas that if the intention of the Legislature was to take within its sweep all societies under all laws relating to the Cooperative Societies in force, then there was no necessity to use the words 'under this Act'. The Legislature was clear in its intent that it is only the Cooperative Society registered under the Act of 1961 relating to Cooperative Societies which would be covered. Mr.Vyas is also right in contending that this interpretation is fortified by the fact that even Section 163 of the Act of 1961 provides that the restriction under Section 163(1) and Section 163(2) would not

apply to 'Cooperative Societies' to which a Multi-Unit Cooperative Societies Act, 1942 applies [Act repealed by Section 110 of the 1984 Act]. We have noticed that Section 163 of the Act of 1961 distinctly identifies and distinguishes the terms 'Society' and 'Cooperative Society', to be registered under any law in other State to which the provisions of a Multi-Unit Cooperative Societies Act, 1942 apply.

In substance, it rules out the regulation of such Cooperative Societies incorporated under other Acts, by the Registrar under the Act of 1961 and a very conscious distinction has been made between the term 'Society' registered under the Local Act and that under a Multi-State Act. The Multi-Unit Cooperative Societies Act, 1942 terms a Multi-State Cooperative Bank to be a 'Cooperative Society', a term which is taken note of under Section 163 of the Act of 1961. It deserves to be noted that the State Act is of the year 1961, whereas the Multi-State Act is of the year 2002. Therefore, at the time the 1961 Act was enacted, obviously the Legislature could never have intended a society proposed to be registered under some future Act to be covered.

We are not at all impressed by the submission of Mr.Joshi that a purposive interpretation or a purposeful meaning should be attached to the definition of society under the Act of 1961 so as to include a Multi-State Cooperative Society by giving a contextual interpretation in view of the opening words to Section 2 of the Act of 1961. Where the intention of the Legislature is clearly to restrict the provisions of the Act of 1961 to Cooperative Societies which were registered under the Act of 1961, one cannot, by process of interpretation, expand the scope so as to even include and read a Multi-State Cooperative Society in the definition of the term 'Society' as provided under Section 2(19) of the Act of 1961.

There could not be any dispute with the proposition of law that the meaning of a word or expression defined may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in definition section, namely, 'unless the context otherwise requires'. In view of this qualification, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matters and interpret the meaning intended to be conveyed by the use of the words in a particular section. But, where there is no obscurity in the language of the section, there is no scope for the application of the rule Ex Visceribus Actus. As held by the Supreme Court in Commissioner of Sales-Tax , this rule is never allowed to alter the meaning of what is of itself clear and explicit.

The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric

but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the Legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. The intention of the Legislature must be found out from the scheme of the Act.

We find considerable force in the submission of Mr.Vyas that unless the requisites under Section 17(1) of the Act of 1961 are complied with, resort to Section 17(4) of the Act of 1961 would not be permissible. The words as they appear in Section 17(4) of the Act of 1961 'right to continue and commence' have to be given the same effect for interpreting the provision. Even by virtue of Section 20 of the Act of 1961, the legal existence of a State Cooperative Society would stand cancelled and there upon would cease to be a body corporate under Section 37 not to be entitled to institute and defend suits or other legal proceedings. If the interpretation of the term 'Society' as sought to be canvassed by Mr.Joshi, the learned counsel appearing for the respondent Bank, is accepted so as to include a Multi-State Cooperative Society within the definition under Section 2(19) of the Act of 1961, then under such circumstances, the term 'Registrar' and 'subject to provisions of the rules' would have to be given a wider meaning to even include the Registrar under the Multi-State Cooperative Societies Act, 2002, which would completely change the complexion and scope of the entire proceedings.

To put it differently, if the respondent Bank herein is permitted to continue the legal proceedings under the State Act of 1961 by virtue of the provisions of Section 159, the effect in substance would be to indirectly permit the State Act to have extra territorial operation and the Multi-State Cooperative Societies would be regulated by the State Cooperative Societies Act. If that be so, then a Multi-State Cooperative Society would be subjected to regulation by the Registrar of a State, which is impermissible."

[14] We shall now deal with the fifth and the most important question as to whether we should interfere in this petition in exercise of our powers under Article 226 of the Constitution to set at naught the merger which is the subject matter of challenge in spite of coming to the conclusion that the merger was not in accordance with law and was in violation of the statutory provisions governing the respondent No.1 bank. We cannot overlook the fact that the merger took place in the year 2008 and the Manekchawk Bank had to be merged with the respondent No.1 bank as the Manekchawk Bank started incurring huge loss and got itself into a very weak financial

position. The position of the depositors, advances and profitability as on 31.3.2007 was as under:

DepositsRs. In lac	AdvancesRs. In lac	Profit/lossRs. In lac	
MCB	3,105.06	2,024.63	- 217.96

[15] From the above referred table, it could be seen that as on 31.3.2007, the Manekchawk Bank was in a loss of Rs.217.96 lacs. We do agree with the submission of Mr. Soparkar, the learned senior advocate appearing for the RBI that if the Manekchawk Bank would have been allowed to continue with the banking business in the manner in which it was functioning with its weak financial position, it would have surely gone in liquidation and the only sufferers thereafter would have been the innocent depositors. According to the the additional affidavit of the RBI, if the bank would have gone in liquidation, then in that case, the depositors would have received only Rs.1 lac under BICGC Act and for the balance amount, they would have had to stand in a queue. We have also been explained that it could have resulted in a cascading effect on other Cooperative Banks as well as the entire banking sector. Instead with the transfer of assets and liabilities to the respondent No.1 bank, the depositors of the Manekchawk Bank were fully protected and considering the interest of the innocent depositors of the Manekchawk Bank, the RBI in larger public interest granted its no objection to the transfer of assets and liabilities of the Manekchawk Bank with the respondent No.1 bank. It is also undisputed that by effect of section 20 of the Act, 1961, the legal existence of a State Cooperative Society would stand cancelled and thereupon would cease to be a body corporate under section 37 of the Act of 1961, not to be entitled to institute and defend suits or other legal proceedings. Today, the position appears to be irreversible. Though, we are of the view that the merger was not in accordance with law in the sense that law does not permit a Cooperative Bank to merge with a Multi State Cooperative Bank, but the fact is that the entire process got completed in 2008 and the Manekchawk Bank cease to exist as on today. Under such circumstances, even if we set aside the order of merger, it is virtually impossible to set the clock back.

[16] Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion may refuse to interfere in larger public interest. The mere illegality of an action or even if an order under challenge is not found to be in accordance with law would not by itself be enough for the Court to interfere if it is found that any such intervention would cause inconvenience or hardship to a sizeable section of the public, who have acted bonafide or were in any way responsible for the illegality pointed out by the petitioners, who themselves are debtors of the

Manekchawk Bank. Ultimately, it would be a matter within the discretion of the Court; ex hypothesi, every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.

[17] In the case of State of M.P. Vs. Nandlal Jaiswal, 1986 4 SCC 566, Supreme Court took the view that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere even if the State action complained of is unconstitutional or illegal. Referring to another decision of the Supreme Court in the case of R.D. Shetty Vs. International Airport Authority of India, 1979 3 SCC 489, the Supreme Court proceeded further to observe that though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, the Court was justified in refusing to grant relief to the petitioners on the ground that the writ petition had been filed by the petitioners more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure.

[18] In this connection, reference is also be made to the observations of the Supreme Court in the case of A.M. Alison and another Vs. B.L. Sen and others, 1957 AIR(SC) 227 The Supreme Court observed that the jurisdiction exercised by the writ Court is an equitable jurisdiction and if, ultimately, by the impugned decision, there has not been any material injustice, the writ Court may be well justified in refusing to interfere simply because there has been some infraction of law.

[19] In the case of M/s Shivshankar Dal Mills Vs. State of Haryana and others, 1980 AIR(SC) 1037 the dealers in that case had paid market fees at the increased rate of 3%, which was raised from the original 2% under Haryana Act 22 of 1977. The excess of 1% over the original rate was declared ultra vires by the Supreme Court in the case of Kewal Krishnan Puri and another Vs. State of Punjab and others, 1980 AIR(SC) 1008 The excess of 1% over the original rate having been declared ultra vires, became refundable to the respective dealers from whom they were recovered by the Market Committee concerned. The demand for refund of the excess amount illegally recovered from them not having been complied with, dealers filed writ petition under Article 32 and 226 of the Constitution for a direction to that effect to the Market Committee concerned. The Market Committee contended that although, the refund of the excess calculation might be illegal due to the dealers, many of them had in turn recovered this excess percentage from the next purchasers. While disposing of the petition, Supreme Court held as under:

> "We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the

intervening period, the High Court would decline to interfere even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one is Ramana Dayaram Shetty V. International Airport Authority of India and the other in Ashok Kumar Mishra v. Collector. We may point out that in R.D. Shetty's case, even though the State action was held to be unconstitutional being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs.1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar."

[20] It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal Court of appeal. To declare the merger illegal and to order status quo ante is bound to result into undue hardship and difficulties for one and all, more particularly the depositors. Therefore, in our view, this is a fit case where we should refuse to exercise our discretionary power under Article 226 of the Constitution of India.

[21] In the result, this petition fails and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.