



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4118 OF 2014

Govindrao Shankarrao Gaikwad
Age-59 years, Occ.- Agriculture,
R/o Kokangaon, Taluka-Niphad, Dist.- Nashik

... Petitioner

Versus

1. The Ganesh Co-operative Bank
(through Branch Manager)
Pimpalgaon Baswant, Taluka Niphad,
Dist.- Nashik.
2. The Special Recovery Officer
The Ganesh Co-operative Bank Ltd., Nashik
Sancheti Towers, Opp. Circle Cinema,
Ashok Stamb, Nashik.
3. Divisional Joint Registrar,
Co-operative Societies, Nashik.
4. Deputy Registrar Co-operative Societies (Parseva)
Nashik District Co-operative Banks Association Ltd.
Nashik.
D-10/11, Manohar Market, 1st Floor,
Sarda Circle, Nashik.
5. The Hon'ble Home Minister,
State of Maharashtra,
Mantralaya, Mumbai.
6. The Hon'ble Minister for Co-operation
State of Maharashtra, Mantralaya,
Mumbai.
7. The State of Maharashtra
through Chief Secretary and
Special Executive Officer (Appeals),
Revenue and Forest Department,
Mantralaya, Mumbai having
Office at Industrial Assurance Building,

First Floor, J. T. Road, Churchgate,
Mumbai-400 020.

8. The Police Commissioner,
Nashik.
9. Shri Sanjay Kashinath More
Age-Major, Occ.-Labourer,
R/o. Shirasgaon, Tal.- Niphad,
Dist.- Nashik.
10. Shri Ghanshyam Vasantrao Bhandare
Age-Major, Occ.-Labourer,
R/o. Ozhar MIG, Tal.- Niphad,
Dist.- Nashik.

... Respondents

WITH
CIVIL APPLICATION NO. 30 OF 2022
IN
WRIT PETITION NO. 4118 OF 2014

The Ganesh Co-operative Bank Ltd.

... Applicant

In the matter between

Govindrao Shankarrao Gaikwad

... Petitioner

Versus

The Ganesh Co-operative Bank Ltd. & Ors.

... Respondents

WITH
WRIT PETITION NO. 12635 OF 2017

Shri Nitin Shankarrao Thorat
Age-36 years, Occ.-Business,
R/o. Islampur, Tal-Walwa, Dist.-Sangli.

... Petitioner

Versus

1. Shri Shivaji Mahadev Patil
Age-Major, Occ.-Agriculture,
2. Shri Mahadev Bhau Patil
Age-Major, Occ.-Agriculture,
Both R/o. Kavalapur, Tal.-Miraj,
Dist.- Sangli.

3. Shri Arun Pandurang Chavan
Age-55 years, Occ.-Service,
Special Recovery & Sale Officer,
Palus Sah. Bank Ltd., Palus.
4. Palus Sahakari Bank Ltd., Palus
Tal-Palus, Dist.- Sangli.
5. District Deputy Registrar Co-op. Societies,
Administrative Building, Vishrambag,
Vijaynagar, Dist.-Sangli.

... Respondents

**WITH
WRIT PETITION NO. 9050 OF 2014**

1. Palus Sahakari Bank Ltd.
Palus, Tal.-Palus, Dist.-Sangli.
2. Shri Arun Pandurang Chavan
Age-56 years, Occ.-Service,
Special Recovery & Sale Officer,
Palus Sahakari Bank Ltd., Palus,
Tal. Palus, Dist.-Sangli.

... Petitioners

Versus

1. Shri Shivaji Mahadev Patil
Age-Major, Occ.-Agriculture,
 2. Shri Mahadev Bhau Patil
Since deceased through his Legal Heirs
-
- 2A.Smt. Housabai Mahadeo Patil
Age-Adult, Occ.-Household,
 - 2B.Shri Shivaji Mahadeo Patil,
Age-Adult, Occ.-Agriculture,
2A & 2B R/o Kavalapur, Tal.-Miraj,
Dist.-Sangli.
 - 2C.Sou. Sumitra Dilip Patil,
Age-Adult, Occ.-Household,
R/o. Karad, Tal.-Karad, Dist.-Satara.
 - 2D.Smt. Sanjivani Hanmant Patil
Age-Adult, Occ.-Household,
R/o. Mahadeonagar, Islampur,
Tal.-Walwa, Dist.-Sangli.

3. Dist. Deputy Registrar Co-op. Societies
Administrative Building, Vishrambag,
Vijaynagar, Sangli.
4. Divisional Joint Registrar,
Co-operative Society, Kolhapur Division,
Kolhapur.
5. Shri Nitin Shankarrao Thorat
Age-Major, Occ.-Business,
R/o. Islampur, Tal.-Walwa, Dist.-Sangli. ... Respondents

**WITH
WRIT PETITION NO. 10999 OF 2012**

1. Shri Kumar Bhau Chougule ... Petitioners
Age-Adult, Occ.-Agriculture,
2. Shri Sachin Kumar Chougule,
Age-Adult, Occ.-Agriculture,
3. Shri Sheetal Kumar Chougule,
Age-Adult, Occ.-Agriculture,

All R/o. Valivade, Tal-Karveer,
Dist.- Kolhapur.

Versus

1. Shri Sanjay Dadaso Khot
Age-53 years, Occ.-Business,
2. Smt. Shalini Dadaso Khot
Age-71 years, Occ.-Household,
Both R/o. Nej, Tal.-Hatkangale,
Dist.-Kolhapur.
3. Special Recovery Officer,
Karmveer Bhaurao Patil Zilla Sah. Pat Sanstha
Maryadit, Jaysingpur,
Sidhathra Building, Opp.-Ram Mandir,
2nd Floor, 9th Lane, Jaysingpur,
Tal.- Shirol, Dist.-Kolhapur.

4. Late Anil Dadaso Khot
Through his legal heirs
(a) Smt. Sangeeta Anil Khot
Age-36 years, Occ.-Household

(b) Kum. Krutika Anil Khot
Age-12 years, Occ.- Education,
Both R/o. Nej, Tal.-Hatkangale,
Dist.- Kolhapur.
5. Dharmvruksha Lagwad and Sanvardhak
Pat Sanstha Maryadit,
Nimshirgaon, Tal.- Shirol,
Dist.-Kolhapur.
6. Bharat Urban Co.-op. Bank Ltd.
Jaysingpur, Tal.-Shirol,
Dist.-Kolhapur.
7. Shri Vasantrao Chougule Nagari
Sahkari Pat Sanstha Maryadit,
Kolhapur, Shahupuri, Vyapari Peth,
Kolhapur.
8. Shri Bahuballi Zilla Nagari Sahakari
Pat Sanstha Maryadit, Jaysingpur,
Tal.-Shirol, Dist.-Kolhapur.

... Respondents

Ms. Mrudula Gargate i/b Ms. Smita R. Gaidhani for the Petitioner in WP 4118/14.

Mr. V. B. Rajure a/w. Mr. Sanjay Rajure for the Petitioner in WP 9050/14 and Respondent Nos. 2 & 3 in WP 12635/17.

Mr. S. R. Ganbavale a/w. Mr. Prithviraj Raorane, Mr. Ashirwad Kolekar for the Petitioner in WP 10999/12.

Mr. Umesh Mankapure for the Petitioner in WP 12635/17.

Mr. Ashok B. Tajane a/w. Mr. Yogesh G. Thorat, Mr. Balaji P. Shinde for Respondent Nos.1 & 2 in WP 4118/14.

Mr. Aditya Patil i/b Mr. Tejpal Ingale for Respondent No.3 in WP 10999/12.

Mr. Surel Shah, Senior Advocate a/w. Ms. Yugandhara Khanwilkar and Mr. Ishan Kapse, Amicus Curiae.

Mr. N. C. Walimbe, Addl GP a/w. Ms. Priyanka Chavan, AGP for the Respondents-State.

CORAM : **M. S. KARNIK AND**
SHARMILA U. DESHMUKH, JJ.

JUDGMENT RESERVED ON : 10th December, 2025

JUDGMENT PRONOUNCED ON : 4th March, 2026

JUDGMENT (PER M. S. KARNIK, J.)

1. These writ petitions have been placed before us to answer a reference made by learned Single Judge of this Court (Hon'ble R. V. More, J. as he then was) in Writ Petition No. 4118 of 2024, by order dated 28th April 2014. The reference arose upon the learned Single Judge noticing an irreconcilable conflict between the views expressed in the judgments of co-ordinate Benches of this Court viz. Order dated 3rd October, 2003 in **Greater Bombay Co-operative Bank Ltd. v. Dhillon P. Shah¹**, (Hon'ble A. M. Khanwilkar, J. as he then was) and Order dated 16th March, 2005 in **Pravin Yashwant Dhanawade v. Jawali Sahakari Bank Ltd.**, Writ Petition No. 810 of 2005 (Hon'ble B. H. Marlapalle, J. as he then was).

2. The issue framed for reference is as follows:

“Whether a litigant, who challenges an action consequential to the issuance of a certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 in a revision under Section 154, and not the recovery certificate itself, is required to deposit an amount equivalent to 50% of the dues recoverable under the recovery certificate or not?”

3. The learned Single Judge was of the opinion that there are conflicting decisions in respect of deposit of 50% of the recoverable dues

¹2004 (1) Mh.L.J. 996

under the Recovery Certificate for entertaining a Revision Application against an Order challenging a derivative action pursuant to the grant of Recovery Certificate as contemplated under Section 101 of the Maharashtra Cooperative Societies Act, 1960 (“MCS Act”, for short).

4. Before we proceed, it would be useful to set out some background facts. The Petitioner, along with Respondent No. 10, stood as guarantor for a loan advanced by Respondent No. 1–Bank to Respondent No. 9. Upon default, the Bank initiated recovery proceedings under Section 101 of the MCS Act. A recovery certificate dated 24th September 2013 was issued against Respondent No. 9 and the Petitioner. The Petitioner expressly did not challenge the validity or legality of the recovery certificate, either before the Divisional Joint Registrar or before this Court. Pursuant to the issuance of the recovery certificate, the Recovery Officer issued a notice of attachment of the Petitioner’s property on 3rd October 2013 under Rule 107 of the Maharashtra Co-operative Societies Rules, 1961 (“the MCS Rules” for short).

5. Thereafter, the Petitioner filed a revision under Section 154 of the MCS Act, confining his challenge solely to the notice of attachment. The recovery certificate itself was not challenged. The Revision was rejected on 14th February 2014 on the ground that the Petitioner had failed to deposit 50% of the recoverable dues, as mandated under Section 154(2A) of the

MCS Act. This order of rejection was challenged before a learned Single Judge of this Court by filing Writ Petition No. 4118 of 2014 (**Govindrao Shankarrao Gaikwad v. The Ganesh Co-operative Bank and Others**). Noticing the conflict between the views expressed by the co-ordinate Benches, the learned Single Judge referred the matter to a larger Bench for determination of the issue quoted above.

6. For properly appreciating the controversy, we find it appropriate to extract the relevant portion of the conflicting decisions of learned Judges of this Court and also the Order of reference.

7. The first decision was rendered by His Lordship A. M. Khanwilkar, J. in **Greater Bombay Co-operative Bank Ltd.** (supra), paragraph Nos. 6 and 8 of which read thus:-

“6. Having considered the rival submissions, I have no hesitation in taking the view that the remedy of revision resorted to by respondents 1 and 2 is, on the face of it, abuse of process of law. I have already adverted to the pleadings filed on behalf of the respondents 1 and 2 before this Court as well as the orders passed by this Court from time to time which are in anterior point of time. It is amply clear that the issue regarding the appropriateness of fresh proclamation and the actions based thereon, was specifically put in issue by the respondent Nos. 1 and 2 in Notice of Motion No. 284 of 2003 in Writ Petition No. 1063 of 2003. However, that argument came to be rejected by the learned Single Judge of this Court on 14th July 2003. If at all the respondents 1 and 2 were not satisfied with the said order, they could have taken the matter in appeal before the Division Bench of this court; but instead, the respondents 1 and 2 taking advantage of some subsequent incidental notice chose to raise the same issue once again before the Revisional Authority. Moreover, what is intriguing to note is that on the one hand the case of the respondent Nos. 1 and 2 in the pending Writ Petition is that that the

Authorities under the State Act have no jurisdiction but, on the other hand, having failed to get suitable interim order from this Court in that Writ Petition, they preferred to invoke the jurisdiction of the Authority under the State Act, whose powers are being questioned. Besides, it is agreed that the respondent Nos. 1 and 2 have already filed appeal against the decision of the single Judge dated 14th July 2003 before the Division Bench of this Court and the same is pending. If that is so, there was no tangible reason for the respondent Nos. 1 and 2 to not instituting and pursuing the appeal, instead of rushing to the respondent No. 3 for interim relief. Besides, although the Revisional Authority was apprised of the fact that the respondent Nos. 1 and 2 have taken recourse to remedy before this High Court and had failed, yet the respondent No. 3 – Revisional Authority obliged the respondent Nos. 1 and 2 by not only entertaining the said Revision Application but also granted interim relief. Suffice it to observe that in such a situation, the Revisional Authority should have stayed of its hands. To my mind, there is substance in the argument canvassed on behalf of the petitioners that the revision as filed by the respondents 1 and 2 before the respondent No. 3 is not maintainable on the principles of res-judicata or principles analogous thereto. On the above reasoning alone, this petition should succeed without examining any other aspect.

7.

8. *Assuming that the Revision was properly filed by the respondents 1 and 2, however, the Revisional Authority could not have entertained that revision in view of non-compliance of the mandate of section 154 (2A) of the Act, which reads thus:*

“No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 unless the applicant deposits with the concerned society, 50% amount of the total amount of recoverable dues.”

To get over this position, learned Counsel for the respondents 1 and 2 contends that the said respondents were not challenging the recovery certificate as such, but only the consequential steps taken by the authorities for execution of the recovery certificate so issued. To my mind, that would not extricate the said respondents from the liability fastened under sub-section (2A) referred to above. It will be preposterous to accept the stand that a person “against whom”, recovery certificate is issued, need not challenge the recovery certificate as such or for that matter, even if he has failed in the challenge to the recovery certificate (as in the present case), yet would be entitled to interdict the process of recovery of the amount specified under the recovery certificate, by ostensibly challenging only the derivative action by way of Revision Application under section 154 of the Act without complying the mandatory requirement under sub-section (2A) thereof of 50%

payment of the total amount of the recoverable dues. For, a person “against whom” recovery certificate has been duly issued and, who has not challenged the same or has failed in his challenge thereto, cannot be in a better position than a person who intends to challenge the recovery certificate itself by way of revision application under section 154 and who is then obliged to pay fifty per cent of amount of recoverable dues. In my opinion, having regard to the purpose and the legislative intent for introducing sub-section (2A), the language of that provision would deserve liberal construction so as to encompass challenge to the derivative actions, by way of revision application under section 154 of the Act, founded on the recovery certificate which has either not been challenged or the challenge thereto has failed. To put it differently, the rigours of sub-section (2A) would take within its sweep revision application filed by a person “against whom” recovery certificate under section 101 of the Act has been issued, challenging the recovery certificate itself or any attempt by him to interdict the process of recovery of the dues founded on such recovery certificate, by ostensibly challenging only the derivative action in relation to the recovery certificate so issued and has become final. Only such purposive construction would suppress the mischief and advance the remedy. Inasmuch as, such construction would suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. This principle laid down in Heydon's case has been enunciated in Craies on Statute Law 7th Edition at Page 96. It is necessary to bear in mind that subsection (2A) was inserted by amendment vide Maharashtra Act 41 of 2000 with effect from 23rd August 2000. This provision has been introduced so as to ensure speedy recovery of the dues of the Societies specified in section 101 of the Act. This provision facilitates immediate recovery of at least fifty per cent amount of the total amount of recoverable dues of such Societies and not allow the entire amount being embroiled in a long drawn litigation. It will be apposite to advert to the statement of objects and reasons for introducing sub-section (2A). The same reads thus:

“5. In order to curb the practice of delaying the recovery process as a result of defaulters resorting to the practice of filing revisions applications, Government has decided to amend section 154 of the Act suitably, so as to provide for the depositing of fifty per cent amount of the recoverable dues by the applicant, at the time of filing such revision application.”

Indubitably, the underlying concern of the Legislature was to provide effective mechanism for speedy recovery of the certificated dues of the specified societies. This amendment was necessitated to

make the special remedy for recovery of the dues of the specified societies as envisaged by section 101 of the Act, more meaningful. Obviously, therefore, no power is given to the Revisional Authority to either waive this condition or even relax the quantum of fifty percent. Such is the mandate of the amended provision. Viewed in this perspective, the submission canvassed on behalf of respondent Nos. 1 and 2 that the mandate of sub-section (2A) has no application to the fact situation of the present case is devoid of merits. A priori, the respondent No. 3 had no authority to entertain the revision application as filed by the respondent Nos. 1 and 2 for want of compliance of mandatory requirement of deposit of fifty per cent amount of the total amount of recoverable dues, much less to grant any interim relief.”

8. The second decision, which led to the conflict, was rendered by His Lordship B. H. Marlapalle, J. in **Pravin Yashwant Dhanawade** (supra), the relevant paragraphs of which read thus:-

“3. This petition takes exception to the order passed by the order respondent No.3 on 15.1.2005. By the the Revision Application has been returned said to the petitioner on the ground that the requirements of Section 154(2A) Societies of the Maharashtra Co-operative Act, 1960 ("the Act" for short), were complied with.

4.

5.

6. From the file placed before me by the learned A.G.P, it is evident that the petitioner was also a party to the proceedings instituted U/sec. 101 of the Act and notices were issued to the borrower as well as the sureties including the present petitioner. The limited grievance raised by the petitioner in the Revision Application before the respondent No.3 is regarding the compliance of Rule 107(6) of the Rules and, therefore, insistence on the compliance of sub-section 2A of Section 154 of the Act was not called for. The scope of the Revision Application is only limited to examine the compliance of Rule 107(6) of the Rules and nothing further. The Revision Application does not require to examine the legality of the Recovery Certificate already issued.”

9. In view of the conflict, learned Single Judge made the reference on the following observations: -

“6. Learned Counsel appearing for the Petitioner relies on the decision of learned Single Judge of this Court in Writ Petition No.810 of 2005 decided on 16th March 2005, where the learned Single Judge [Coram : Marlappale, J.] has held that when a revision is preferred against a recovery under Rule 107(6) of the Rules, the revisional authority cannot insist on compliance of sub-section (2A) of 154 of MCS Act. According to the Petitioner, logically a revision preferred against a notice issued under Rule-107(5)(a) would not attract the deposit. Indeed, such a consequence would flow from the judgment of Marlappale, J. However, Mr. Venegaonkar, learned Counsel appearing for the Respondent Nos.1 and 2 has relied on another decision of learned Single Judge of this Court [Coram : A. M. Khanwilkar, J.] in Greater Bombay Co-operative Bank Ltd v. Dhillon P. Shah & Ors [2004(1) Mh.L.J. 996]. There the learned Single Judge held that a revision application, challenging a notice to deliver possession of the property, also attract the requirement of 50% deposit. The learned Single Judge specifically rejected the argument that the requirement to deposit 50% of the amount is attracted only when the recovery certificate as such is challenged and not the consequential steps taken by the authorities for execution of the recovery certificate on construction of section 154(2A) of MCS Act. In these circumstances, Mr. Venegaonkar, learned Counsel appearing for Respondent Nos.1 and 2 urged that this Court should follow the view of Khanwilkar, J. laid down in the case of Greater Bombay Co-operative Bank (supra).

7. No other decision of this Court was cited before me. Different Benches of this Court appear to have expressed different opinions with regard to the question whether the deposit of amount equivalent to 50% of recoverable dues is a condition precedent for entertaining revision under section 154 of MCS Act in which recovery certificate issued under section 101 is not directly under challenge but only a consequential action is assailed. As stated above, in Writ Petition 810 of 2005, the learned Single Judge has held that when a revision is preferred against a recovery under Rule 107(6), the compliance of provision of sub-section (2A) of 154 cannot be insisted upon. In Greater Bombay Co-operative Bank case (supra), another learned Single Judge has held that even in such an eventuality the compliance with the provision of sub-section (2A) of 154 is mandatory. In view of these conflicting decision, in my opinion, it would be appropriate to refer the following question for decision by a larger bench in accordance with law :

“Whether a litigant, who challenges an action consequential to the issuance of a certificate under section 101 of MCS Act, section 1960 in a revision under section 154 and not the

recovery certificate itself, is required to deposit the amount equivalent to 50% of dues recoverable under the recovery certificate, or not ?”

10. Mr. Surel Shah, Senior Advocate with Ms. Yugandhara Khanwilkar, learned *Amicus Curiae* submitted that this Court while deciding the reference can also decide whether the reference was necessary. According to him, there is no apparent conflict as the decision in **Greater Bombay Co-operative Bank Ltd.** (supra) considers in depth the reasons for holding why there is a mandatory requirement for deposit of 50% by placing reliance on the statement of objects and reasons for amending Section 154 of the MCS Act and inserting sub-section 2A therein; whereas the learned Judge in **Pravin Yashwant Dhanawade** (supra) has not assigned any reasons as to why the said requirement of deposit is not necessary. It is therefore submitted that the decision of this Court in **Pravin Yashwant Dhanawade** (supra) does not lay down any ratio for the conflict to arise. We do find some substance in this submission of Shri Surel Shah. However, respecting the view of the learned Judge making the reference, we proceed to consider the reference on merits. The submissions of Shri Shah on merits are more in line with the view expressed in **Greater Bombay Co-operative Bank Ltd.** (supra). We have also heard learned counsel who argued in support of the view in **Greater Bombay Co-operative Bank Ltd.** (supra).

11. Learned counsel appearing for the parties in support of the view

canvassed in **Pravin Yashwant Dhanawade** (supra) submitted that the challenge in Revision under Section 154 is not to the Recovery Certificate issued under Section 101 of the MCS Act. It is submitted that the question of deposit of 50% would arise only if the Recovery Certificate is challenged. There is no such requirement of deposit when a notice issued in the course of execution of the Recovery proceedings is under challenge by way of Revision. It is submitted that when the language of the provision is clear and unambiguous, there is no reason to deviate from the rule of literal interpretation.

12. We have heard learned counsel. Let us now proceed to answer the reference. We have carefully perused the conflicting orders. The view of His Lordship in **Greater Bombay Co-operative Bank Ltd.** (supra) to our mind, is in complete conformity with the object behind enacting the MCS Act, for the reasons hereafter set out. To begin with, it would be apposite to make a reference to the relevant provisions of the Maharashtra Co-operative Societies Act, 1960 and the Maharashtra Co-operative Societies Rules, 1961. Sub-section (2A) of Section 154 of the MCS Act, 1960 reads thus:-

*“154. Revisionary powers of State Government and Registrar
(1)....*

...

(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 or section 154B-29 unless the applicant deposits with the

concerned society, fifty per cent. amount of the total amount of recoverable dues. If the revision application is allowed, the Revisional Authority may pass an order directing the society to refund the amount so deposited to the applicant):

Provided that, in case of such revision where revisional authority has granted a stay to the recovery of dues, the authority shall as far as may be practicable, dispose of such revision application as expeditiously as possible but not later than six months from the date of the first order.”

Section 101 of the MCS Act, 1960 reads thus:

“101. Recovery of certain sums and arrears due to certain societies as arrears of land revenue]

*[(1) Notwithstanding anything contained in sections 91, 93 and 98, on an application made by a resource society undertaking the financing of crop and seasonal finance as defined under the Bombay Agricultural Debtors Relief Act, 1947, 5[or advancing loans for other agricultural purposes repayable during a period of not less than eighteen months and not more than five years) for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crop or seasonal finance [or for other agricultural purposes as aforesaid] or by a crop-protection society for the recovery of the arrears of the initial cost or of any contribution for obtaining services required for crop-protection society or for the recovery of the arrears of the initial cost or of any contribution for obtaining services required for crop protection which may be due from its members or other owners of lands included in the proposal (who may have refused to become members) or by a lift irrigation society for the recovery of arrears of any subscription due from its members for obtaining services required for providing water supply to them, [or by a Tulaka or Block level village artisans multipurpose society advancing loans and arranging for cash credit facilities for artisans for the recovery of arrears of its dues,] [or 9[***]], or by a co-operative dairy society advancing loans for the recovery of arrears of any, sum advanced by it to any of its members or by an urban co-operative bank for the recovery of arrears of its dues, [or any sum advanced by the District Central Co-operative Bank to its 2[* * *] members or by non-agricultural co-operative credit society for the recovery of the arrears of its dues] or by salary-earners co-operative society for the recovery of arrears of its dues, or by a fisheries co-operative society for the recovery of arrears of its dues,] 3[or by any such society or class of societies, as the state Government may from time to time, notify in the Official Gazette, for the recovery of any sum advanced to, or any*

subscription or any other amount due from, the members of the society or class of societies so not notified;] and [on the society concerned furnishing a statement of accounts and any other documents as may be prescribed] in respect of the arrears, 5[the Registrar may, after making the inquiry in such manner as may be prescribed, grant a certificate for the recovery of the amount stated therein to be due as arrears. The application for grant of such certificate shall be made in such form and by following such procedure, accompanied by such fees and documents as may be prescribed].

[Explanation I]. For the purposes of this sub-section, the expression "other agricultural purposes includes dairy, pisciculture and poultry.]

*[Explanation II- ***]*

(2) Where the Registrar is satisfied that the concerned society has failed to take action under the foregoing sub section in respect of any amount due as arrears, the Registrar may, of his motion, after making such inquiries [as may be prescribed], grant a certificate for the recovery of the amount stated therein to be due as arrears and such a certificate shall be deemed to have been issued as if on an application made by the society concerned.

(3) A certificate granted by the Registrar under sub-section (1) or (2) shall be final and a conclusive proof of the arrears stated to be due therein, and the same shall be recoverable according to the law for the time being in force as arrears of land revenue. A revision shall lie against such order or grant of certificate, in the manner laid down under section 154 and such certificate shall not be liable to be questioned in any court).

(4) It shall be lawful for the Collector and the Registrar to take precautionary measures authorised by sections 140 to 144 of the "Bombay Land Revenue Code, 1879 or any law or provision corresponding thereto for the time being in force, until the arrears due to the concerned society), together with interest and any incidental charges incurred in the recovery of such arrears, are paid, or security for payment of such arrears is furnished to the satisfaction of the Registrar"

13. It is also pertinent to refer to Rule 107, particularly, Rule 107(6) of the MCS Rules, 1961, which reads as follows:-

"107. Procedure for attachment and sale of property under Section 156-

(1)....

....

(6) Where the moveable property to be attached is the salary or allowance or wages of a public officer or a railway servant or a servant of a local authority or a firm or a company, the Recovery Officer may, on receiving a report from the Recovery Officer), order that the amount shall, subject to the provisions of Section 60 of the Code of Civil Procedure, 1908, be withheld from such salary or allowance or wages either in one payment or by monthly instalments as the Recovery Officer may direct and upon receipt of the order, the officer or other person whose duty it is to disburse such salary or allowance or wages shall withhold and remit to the Recovery Officer) the amount due under the order or the monthly instalment, as the case may be.”

14. In **Pravin Yashwant Dhanawade** (supra), the revision was allowed on the ground that it was not mandatory to comply with the requirement of Section 154(2A), as the revision was confined only to the alleged non-compliance with Rule 107(6) and did not challenge the recovery certificate issued under Section 101 of the Act.

15. In **Greater Bombay Co-operative Bank Ltd.** (supra) while adjudicating a challenge to the order of the Revisional Authority entertaining a revision despite non-compliance with Section 154(2A) of the Act, it was held that such revision proceedings amounted to an abuse of the process of law. It was observed that the revision could not have been entertained when there was non-compliance with Section 154 (2A) merely on the ground that the revision did not directly challenge the recovery certificate but only questioned the consequential or derivative actions. Applying the principle of purposive construction to suppress the mischief and advance the remedy, His Lordship held that the rigours of Section

154(2A) would extend to revision applications filed by persons against whom a recovery certificate under Section 101 has been issued, whether such revision challenges the recovery certificate itself or only the derivative action taken pursuant thereto, with a view to obstruct or interdict the recovery proceedings.

16. It is a settled principle of law that where the language of a statute is clear and unambiguous, it must be given plain and literal meaning. The Court cannot add words to a statute or read into it something which is not expressly provided by the legislature. When the words of the statute are plain, the intention of the legislature must be gathered from the language used, and no external aid of interpretation is permissible. It is settled law that whilst interpreting provisions of a statute, Courts can neither add nor eliminate words from the text of the provision.

17. In **Rohitas Kumar Vs. Omprakash Sharma**² it has been held that while interpreting provisions of a statute, the Court can neither add, nor subtract even a single word. The court can iron out the creases but while doing so it must not alter the fabric which an Act has woven. The courts have to administer the law as they find it, and it is not permissible for the court to twist the clear language of the enactment in order to avoid any real or imaginary hardship which such literal interpretation may cause. The

² (2013) 11 scc 451

same view has been reiterated in a 5-judge bench judgment of the Hon'ble Supreme Court in case of **Commissioner of Customs (Imports) Vs. Dilip Kumar**³

18. It is also true that a literal construction must prevail unless it leads to an absurdity or defeats the purpose of the enactment. Ordinarily, it is not within the purview of judicial discretion to stretch the words used by the legislature to account for the gaps or omissions i.e. to supply legislative casus omissus. In **Bhaskar & Anr. Vs. Ayodhya Jewelers**⁴, the Hon'ble Supreme Court has held that a statute is expressed in a language approved and enacted by the legislature and hence the Courts should exercise considerable caution before adding or omitting or substituting words but however, where circumstances warrant the application of the doctrine of casus omissus, the fulfilment of the following criteria must be ascertained:

- (i) What is the intended purpose of the statute or the provision in question;
- (ii) Whether it was by inadvertence that the draftsman and Parliament had failed to give effect to that purpose in the provision in question; and
- (iii) What would be the substance of the provision that Parliament would have made, although not necessarily the precise words that Parliament would have used, had the error in the Bill been noticed.

3 (2018) 9 SCC 1

4 (2023) 9 SCC 281

In the Judgment of Hon'ble Supreme Court in **Union of India vs. Rajiv Kumar**⁵, the Hon'ble Supreme Court in para 18 onwards has discussed the principle of Casus Omissus and as to when the said can be supplied by the Court.

19. Before proceeding any further, it would be profitable to advert to the Statement of Objects and Reasons (for short, "SOR") underlying the insertion of sub-section (2A) by way of amendment, to discern the true legislative intent behind the introduction of the said provision and to examine whether such intent would be achieved if the terminology employed under Section 154(2A) of the MCS Act, 1960 is construed literally. The relevant portion of the SOR reads thus:

"5. In order to curb the practice of delaying the recovery process as a result of defaulters resorting to the practice of filing revision applications, Government has decided to amend section 154 of the Act suitably, so as to provide for the depositing of fifty per cent, amount of the recoverable dues by the applicant, at the time of filing such revision application."

20. A plain reading of Section 154 (2A) refers to Revision only against Recovery Certificate (and its consequential decisions and orders) issued by the Registrar u/s. 101 and not to Revision in respect of Orders passed under Rule 107 which are in the nature of execution of Recovery Certificate under Rule 107. The language of Section 154 (2A) of the said Act being plain and unambiguous, His Lordship in **Greater Bombay Co-**

⁵ (2003) 6 SCC 516

operative Bank Ltd. (supra), by reading orders passed under Rule 107 into sub-section (2A) of Section 154 of the said Act has supplied Casus Omissus. In doing so, His Lordship has resorted to external aids of interpretation i.e. has relied upon Statement and Object for bringing an amendment to Section 154 by way of sub-section (2A). The said exercise is based upon settled principle of interpretation as expounded in Heydon's Rule of Interpretation.

21. One can find the rule of purposive interpretation elaborated in the judgment of the Hon'ble Supreme Court in **X Vs. Principal Sec. Health and Family Welfare Dept Gave of NCT Delhi**⁶, wherein it has been held that the cardinal principle of the interpretation of the statute is to identify the intention of the legislature and the true legal meaning of the enactment. Furthermore, the intention of the legislature can be derived from the way a sentence is formed, the words used therein, and the language used by the legislature. In the very same judgment, the Hon'ble Supreme Court also makes a reference to the Heydon's Rule in paragraph No. 35 which states that while gathering the intent of the legislature, the Courts have to look at what was the mischief and defect that was sought to be cured by implementation of the statute.

22. A conjoint reading of the relevant provisions of the MCS Act, 1960 and the Rules of 1961, along with the Statement of Objects and Reasons

⁶ (2023) 9 SCC 433

referred to above, makes it abundantly clear that the mischief sought to be remedied by the legislature by introducing sub-section (2A) to Section 154 by way of amendment, making the deposit of 50 percent of recoverable dues under the Recovery Certificate issued under Section 101 mandatory for entertaining a Revision Application, was to deter litigants from adopting dilatory tactics by filing frivolous revision applications with the sole object of delaying the execution of recovery certificates issued under Section 101 of the MCS Act, 1960, and thereby to ensure that creditor banks do not suffer losses on account of debts being rendered non-performing assets.

23. In this view of the matter, a narrow interpretation of the term “recovery certificate” as used in the phraseology of Sub-section (2A) of Section 154, which excludes revision applications filed against derivative or consequential actions arising out of the recovery certificate, would defeat the very object of the amendment and render the amended provision otiose.

24. A literal interpretation in the present case would defeat the very object of the amendment. In such circumstances, we find it appropriate to adopt the principle of purposive interpretation. The rule of literal interpretation cannot be applied mechanically where it results in frustration of the legislative intent.

25. The provision must be construed purposively so as to give effect to the legislative intent and advance the object of the enactment. While interpreting a statute, the Court must adopt a construction which suppresses the mischief and advances the remedy. A narrow or literal interpretation, if it defeats the object of the statute, must give way to a purposive interpretation. The Court must interpret the provision in a manner that makes the statute workable and effective, rather than rendering it nugatory. The true intention of the legislature is to be gathered not merely from the words used, but from the context, object, and purpose of the enactment.

26. When ambiguity in interpreting a certain provision arises, the Courts have followed the principle of purposive construction, which is to give such an interpretation of the ambiguous provision as to uphold its true purpose. The purpose of a certain provision can be determined by ascertaining the intent of the legislature behind the use of words in a certain Section, as well as the legislative history of the provision.

27. In **Md. Firoz Ahmad Khalid v. State of Manipur & Ors.**⁷, Their Lordships referred to the precedent in **Shailesh Dhairyawan v. Mohan Balkrishna Lulla**⁸ and in **Grid Corporation of Orissa Ltd. v. Eastern Metals & Ferro Alloys**⁹, which discuss the principle of purposive construction

⁷ 2025 SCC OnLine SC 875.

⁸ (2016) 3 SCC 619.

⁹ (2011) 11 SCC 334.

elaborately. The relevant paragraphs have been reproduced below for the facility of convenience:-

“31. ...The principle of “purposive interpretation” or “purposive construction” is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the “purpose” behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:

Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language.” [Aharon Barak, Purposive Interpretation in Law (Princeton University Press, 2005).]

32. Of the aforesaid three components, namely, language, purpose and discretion “of the court”, insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfil.

33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the “golden rule”, it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well.”

(emphasis supplied)

28. The Hon’ble Supreme Court has made it amply clear that casus

omissus cannot be supplied except in cases of clear necessity and when reasons for it are found within four corners of the statute itself.

29. Analysing the issue raised in this reference in the light of the parameters governing the application of the doctrine of casus omissus, it is our considered opinion that a literal interpretation of sub-section (2A) of Section 154 results in an unduly narrow construction of the expression “recovery certificate” employed therein. Such an interpretation would revive the very mischief which the legislature intended to remedy by introducing sub-section (2A) to Section 154, namely, to deter litigants from filing frivolous revision applications with the sole object of stalling recovery proceedings, to the detriment of the creditor bank. Exempting an applicant from compliance with the mandatory statutory requirement of depositing fifty per cent of the recoverable dues prior to filing a revision application, merely on the ground that the revision does not directly challenge the recovery certificate but only assails a derivative or consequential action, as held in **Pravin Yashwant Dhanawade** (supra), cannot, in our view, be the correct interpretation of sub-section (2A) of Section 154. We therefore are in respectful agreement with view propounded by His Lordship in **Greater Bombay Co-operative Bank Ltd.** (supra).

30. His Lordship in **Greater Bombay Co-operative Bank Ltd.** (supra), found that mischief which the Legislature intended to suppress by way of

amendment to Section 154 by incorporating sub-section (2A) was to prevent the delay in execution of Recovery Certificate issued under Section 101 of the said Act, which procedure was summary in nature, and to ensure that the Creditor Bank would not suffer any loss on account of debt being rendered a non performing asset. Thus, the term "recovery certificate" as it appears in the provision must necessarily be interpreted keeping in mind the legislature's attempt to deter and address said issues of delaying tactics resorted to by defaulters by filing frivolous revision applications. A narrow interpretation of the term "recovery certificate" will enable non-genuine applicants to abuse the process of law to delay repaying its lender by filing multiple applications which cause delay and the said applications would be filed without any accountability or loss to a non-genuine applicant. However, in case of a genuine applicant, if such an applicant succeeds in the revision application, the said applicant would receive a full refund. Thus, the legislature kept in mind the rights of both, the applicant and the lender, and the principles of fairness and equity whilst envisaging the amendments (i.e. in 2000 and 2022) and the interpretation of the said provision therefore must reflect the same. Thus, the said term "recovery certificate" as it appears in the provision, must include not only the recovery certificate but also all consequential decisions and orders as well. This interpretation is the only way the legislative intent

in making this amendment, to address and deter issues of delaying tactics, can be fully implemented.

31. We find it significant to bear in mind the observations of the Hon'ble Supreme Court in **Bengal Secretariat Co-op. Land Mortgage Bank and Housing Society Ltd. Vs. Alope Kumar & Anr.**¹⁰.

32. No doubt that this reference was made in the year 2014, in respect of conflicting orders of the learned Single Judges passed in the year 2003 and 2005 which were rendered prior to the constitutional amendment. However, the object behind initiating fundamental reforms to revitalise the cooperative sector cannot be lost sight of. The salutary principles for functioning of the cooperative societies were always in existence. By virtue of the said amendment, the functioning of the cooperative societies was made more robust. We may hasten to add that we are conscious of the fact that the Hon'ble Supreme Court was dealing with the 97th amendment in the Constitution of India which came into effect on 12.01.2012; whereas conflicting orders which form the basis of the reference were passed prior coming into effect of the 97th amendment. The underlying principles of the cooperative movement discussed by Their Lordships are significant in the context of the present reference and hence, we have extensively extracted the relevant paragraphs of the said judgment hereinbelow.

¹⁰(2024) 14 SCC 466

33. Their Lordships have referred to the history of the co-operative movement in India which was extensively traced by the Hon'ble Supreme Court in **Vipulbhai M. Chaudhary Vs. Gujarat Co-op. Milk Mktg. Federation Ltd.**¹¹ Paragraph Nos.37 and 38 of **Bengal Secretariat Co-op. Land Mortgage Bank and Housing Society Ltd.** (supra) are relevant, which set out seven co-operative principles as guidelines by which the co-operatives put their values into practice. Paragraphs 37 and 38 read thus:-

“37. For the purpose of answering the aforesaid question, this Court extensively traced the history of the Cooperative Movement in India. The International Cooperative Alliance Statement on the Cooperative Identity was adopted in Manchester, United Kingdom on 23-9-1995. The “Cooperative” is defined as:

“A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.”

38. The Statement further provides for the “seven Cooperative principles” as guidelines by which the cooperatives put their values into practice. Following are the principles:

“1st Principle:

Voluntary and Open Membership.- Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2nd Principle:

Democratic Member Control.- Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are also organised in a democratic manner.

3rd Principle:

Member Economic Participation.- Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common

¹¹(2015) 8 SCC 1

property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes : developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.

4th Principle:

Autonomy and Independence.- Cooperatives are autonomous, self-help organisations controlled by their members. If they enter to agreements with other organisations, including Governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.

5th Principle:

Education, Training and Information.- Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their cooperatives. They inform the general public-particularly young people and opinion leaders-about the nature and benefits of cooperation.

6th Principle:

Cooperation among Cooperatives.-Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structure.

7th Principle:

Concern for Community.- Cooperatives work for the sustainable development of their communities through policies approved by their members.”

34. Their Lordships then elaborated on the co-operative movement in India while referring to the amendment introduced to the Constitution by inserting a new Part IX-B on co-operative societies. Paragraph Nos.39 and 40 make an important reference, reading thus:-

“39. The cooperative movement in India started at the beginning the 20th century. Though the movements were also based on some of the values and principles stated above, it appears that the cooperatives in India did not have effective autonomy, democratic functioning and professional management. The National Policy on

cooperatives announced by the Department of Agriculture and Cooperation, Ministry of Agriculture, Government of India adopted in March 2002, is wholly based on the definition, values and principles stated above. The 97th Amendment to the Constitution of India, in fact, gave a constitutional frame to this policy.

40. *Apart from providing for the right to form cooperative societies to be a fundamental right under Article 19 of the Constitution of India and insertion of Article 43-B under the directive principles of State policy on promotion of cooperative societies, the amendment also introduced a new Part IX-B on cooperative societies. Reference to the Statement of Objects and Reasons of the amendment would give a clear picture as to the need to strengthen the democratic basis and provide for a constitutional status to the cooperative societies. Thus, one has to see the constitutional aspirations on the concept of cooperative societies after the 97th Amendment in the Constitution of India which came into effect on 12-1-2012:(2015) 8 SCC 1*

"Statement of Objects and Reasons

1. The cooperative sector, over the years, has made significant contribution to various sectors of national economy and has achieved voluminous growth. However, it has shown weaknesses in safeguarding the interests of the members and fulfilment of objects for which these institutions were organised. There have been instances where elections have been postponed indefinitely and nominated office bearers or administrators remaining in-charge of these institutions for a long time. This reduces the accountability of the management of cooperative societies to their members. Inadequate professionalism in management in many of the cooperative institutions has led to poor services and low productivity. Cooperatives need to run on well-established democratic principles and elections held on time and in a free and fair manner. Therefore, there is a need to initiate fundamental reforms to revitalize these institutions in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management.

2. The "cooperative societies" is a subject enumerated in Entry 32 of the State List of the Seventh Schedule of the Constitution and the State Legislatures have accordingly enacted legislations on cooperative societies. Within the framework of State Acts, growth of cooperatives on large scale was envisaged as part of the efforts for securing social and economic justice and equitable distribution of the fruits of development. It has, however, been experienced that in spite of considerable expansion of cooperatives, their performance in

qualitative terms has not been up to the desired level. Considering the need for reforms in the Cooperative Societies Acts of the States, consultations with the State Governments have been held at several occasions and in the conferences of State Cooperative Ministers. A strong need has been felt for amending the Constitution so as to keep the cooperatives free from unnecessary outside interferences and also to ensure their autonomous organisational set up and their democratic functioning.

3. The Central Government is committed to ensure that the cooperative societies in the country function in a democratic, professional, autonomous and economically sound manner. With a view to bring the necessary reforms, it is proposed to incorporate a new Part in the Constitution so as to provide for certain provisions covering the vital aspects of working of cooperative societies like democratic, autonomous and professional functioning. A new article is also proposed to be inserted in Part IV of the Constitution (Directive Principles of State Policy) for the States to endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies. The proposed new Part in the Constitution, inter alia, seeks to empower Parliament in respect of multi-State Cooperative societies and the State Legislatures in case of other cooperative societies to make appropriate law, laying down the following matters, namely—

- a) provisions for incorporation, regulation and winding up of Cooperative societies based on the principles of democratic member-control, member-economic participation and autonomous functioning;*
- (b) specifying the maximum number of directors of a cooperative society to be not exceeding twenty-one members;*
- (c) providing for a fixed term of five years from the date of election in respect of the elected members of the board and its office bearers;*
- (d) providing for a maximum time-limit of six months during which a board of directors of cooperative society could be superseded or kept under suspension;*
- (e) providing for independent professional audit;*
- (f) providing for right of information to the members of the cooperative societies;*
- (g) empowering the State Governments to obtain periodic reports of activities and accounts of cooperative societies;*
- (h) providing for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on the board of every cooperative society, which have individuals as members from such categories;*

(i) *providing for offences relating to cooperative societies and penalties in respect of such offences.*

4. It is expected that these provisions will not only ensure the autonomous and democratic functioning of cooperatives, but also ensure the accountability of management to the members and other stakeholders and shall provide for deterrence for violation of the provisions of the law.

5. *The Bill seeks to achieve the above objectives."*
(emphasis supplied)

35. Their Lordships in paragraph No.41 observed that by 12th January, 2013, all laws on cooperative societies were bound to be restructured in consonance with the 97th Amendment to the Constitution of India and, in any case, any provision in the Act or Rules or bye laws otherwise inconsistent with the Constitution was made inoperative thereafter. Articles 43-B and 243-ZT mandate all the States and the competent authorities to structure cooperative societies as conceived by the Constitution of India, if not already so structured.

36. The reason why we have extensively referred to the observations of the Hon'ble Supreme Court is that the State is committed to ensure that the cooperative societies in the country function in a democratic, professional, autonomous and economically sound manner. The provisions not only ensure the autonomous and democratic functioning of cooperatives, but also ensure the accountability of management to the members and other stakeholders and provide for deterrence for violation of the provisions of the law. In paragraph No.48, Their Lordships have

observed that in the background of the constitutional mandate, the question is not what the statute says but what the statute must say. If the Act or the Rules or the bye-laws do not say what they should say in terms of the Constitution, it is the duty of the Court to read the constitutional spirit and concept into the Acts. In that context, the duty of the courts is ascertaining and giving effect to the will of the Parliament as expressed in its enactments. The following observations are important:-

“48. In the background of the constitutional mandate, the question is not what the statute does say but what the statute must say. If the Act or the Rules or the bye-laws do not say what they should say in terms of the Constitution, it is the duty of the Court to read the constitutional spirit and concept into the Acts. “Insofar as in its Act Parliament does not convey its intention clearly, expressly and completely, it is taken to require the enforcement agencies who are charged with the duty of applying legislation to spell out the detail of its legal meaning. This may be done either — (a) by finding and declaring implications in the words used by the legislator, or (b) by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy) and the purpose of the legislation.” [See: Bennion on Statutory Interpretation by Francis Bennion, 6th Edn. 136.]

49. The conventional view law is that the legislature alone makes the law. But as Bennion puts it:

“The truth is that courts are inescapably possessed of some degree of legislative power. Enacted legislation lays down rules in advance. The commands of Parliament are deliberate prospective commands. The very concept of enacted legislation postulates an authoritative interpreter who operates ex post facto. No such interpreter can avoid legislating in the course of exercising that function. It can be done by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy).” [See: Bennion on Statutory Interpretation by Francis Bennion, 6th Edn. 137.](2015) 8 SCC 1

50. According to Donaldson, J.: (QB p. 638)

“The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments. In the performance of this duty the Judges do not act as computers into which are fed the statutes and the rules for the construction of statutes and from whom issue forth the mathematically correct answer. The interpretation of statutes is a craft as much as a science and the Judges, as craftsmen, select and apply to the appropriate rules as the tools of their trade. They are not legislators, but finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing.”

[See: Corocraft Ltd. v. Pan American Airways Inc., QB p. 638 : WLR p. 732]

51. *In the celebrated case of Seaford Court Estates Ltd. v. Asher, Lord Denning has succinctly summarised the principle on the role of the court. To quote: — (KB pp. 498-99)*

“... Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity.A Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give “force and life” to the intention of the legislature.Put into homely metaphor it is this : A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.”

52. *In Rattan Chand Hira Chand v. Askar Nawaz Jung, this Court at para 17 of the judgment, has also dealt with the principles in following words : (SCC p.77)*

“17.The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the

society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.”

37. We therefore hold that challenging the recovery certificate or any derivative or consequential action arising out of the recovery certificate in revision would entail the mandatory pre-requisite of depositing 50 percent of the recovery dues under the Recovery Certificate under Section 154 (2A) and in terms of what has been held by His Lordship in **Greater Bombay Co-operative Bank Ltd.** (supra).

38. The writ petitions be placed before the learned Single Judge for further consideration.

(SHARMILA U. DESHMUKH, J.)

(M. S. KARNIK, J.)