Jayant Verma . vs Union Of India on 16 February, 2018

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Bench: Navin Sinha, R.F. Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 134 OF 2013

JAYANT VERMA & ORS. … PETITIONERS

VERSUS

UNION OF INDIA & ORS. … RESPONDENTS

JUDGMENT

R.F. NARIMAN, J.

1. A writ petition, by way of a Public Interest Litigation, filed under Article 32 of the Constitution of India, assails the constitutional validity of Section 21A of the Banking Regulation Act, 1949. The aforesaid section was introduced into the Banking Regulation Act by the Banking Laws (Amendment) Act of 1983 with effect from 15.2.1984. Section 21A of the Banking Regulation Act reads as under:

> "21A. Rates of interest charged by banking companies not to be subject to scrutiny by courts Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be re- opened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive."

2. It will be seen that Section 21A interdicts the reopening by courts of a debt between a banking company and its debtor, on the ground that the rate of interest charged by the banking company, in respect of a loan transaction, is excessive. The section seeks to keep out of harm's way the Usurious Loans Act, 1918 and/or any other State legislation relating to indebtedness, and then declares that no such loan transaction shall be reopened by any court on the ground of charging of excessive rates of interest. The writ petition has been filed by certain public spirited citizens, who rely on the report of the Parliamentary Standing Committee on Agriculture for the year 2006-2007 to say that Section 21A should be abolished, insofar as it applies to rural indebtedness. The Standing Committee's Report reads as follows:

"The Committee feels that the worst exploitation of farmers is through the adverse credit policies of the financial institutions which compel farmers to starve under the burden of loans and commit suicides. The Committee finds that in 1918, the British passed the Usurious Loans Act which provided that no farmer could be charged a rate of interest higher than the authorised rate- which at that time was 5.5 per cent, and if charged, the case could be re-opened in court and the entire account re-settled. Moreover, the total amount of interest could not be higher than the original capital. But in 1949, the Banking Regulation Act was passed which made a special provision under Section 21 (A) saying that these will not apply to banking companies including cooperative banks.

In view of the plight of farmers due to heavy burden of credits, the Committee recommend that section 21 (A) of the Banking Regulation Act should be scrapped. All out concerted efforts should be made to bring down the rate of interest on Farm Credit to the level of 5.5% simple interest, as it used to be in the early 20th century. In case of cooperatives, transaction cost/margin at each layer must be reduced as the length of chain, from RBI to NABARD to State-District and Cooperative Societies at village level and Regional Rural Banks, is very big. Eventually, the farmer has to take the burden of all these middlemen/lending agencies. The Committee, therefore, recommends to shorten this chain, so that the eventual creditor is directly linked to the borrower. The Committee further desire the Government to ensure that in no case, the interest should be higher than the original capital and charging of compound rate of interest should be absolutely prohibited so that exploitation of farmers by financial institutions is minimized.

REPLY OF THE GOVERNMENT 1.23 The Government in their action taken reply have stated that in order to bring down rate of interest on farm loans it has been announced in the Union Budget for the year 2006-07 that effective from Kharif 2006-07, farmers would receive crop loans upto a principal amount of Rs. 3 lakh at 7% rate of interest and the Government of India would provide necessary interest subvention for this purpose. Crop loans to farmers are generally made available through Kisan Credit Cards (KCC) which are valid for 3 years. As incentive for good performance, credit limits under KCC could be enhanced to take care of increase in costs, change in cropping pattern etc. Banks have been advised by RBI that total interest debited to an account should not exceed the principal amount in respect of short term loans advanced to small and marginal farmers. As per the extant RBI instructions, banks are not allowed to compound interest on current dues of

crop loans and term loans in respect of direct agricultural advances granted to farmers. If such loans become overdue banks have been advised that where the default is due to genuine reasons, they should extend the period of loan or reschedule the installments under term loans. Once such a relief has been extended the over dues become current dues and hence banks should not compound interest thereon. In case of long duration crops, interest is recovered only annually.

COMMENTS OF THE COMMITTEE 1.24 The Committee are dismayed to know that the Department has not paid any heed to the recommendation of the Committee to scrap Section 21 (A) of Banking Regulation Act, 1949 which hinders the provision of Usurious Loans Act, 1918 under which it was, inter alia, provided that the total amount of interest on a loan taken by a farmer could not be higher than the original capital. The Committee, therefore, reiterate their earlier recommendation that Section 21 (A) of the Banking Regulation Act, 1949 should be deleted so as to ensure that no Bank charges interest more than the original capital, irrespective of the fact, whether it is a short term loan or long term loan, from small and marginal farmers.

Moreover, the issue of cutting the costs/margin at each layer of cooperative has also not been addressed. The Committee, therefore, reiterates their earlier recommendation to shorten the chain of cooperative loan institutions and directly link the eventual creditor to the borrowers." According to the petitioners, a total number of 2,56,913 farmers have committed suicide in India between the years 1995 to 2010, and this is because, and directly linked to, usurious rates of interest being charged from them by banks, which cannot be interfered with by courts, thanks to Section 21A.

3. Shri Sanjay Parikh, learned counsel appearing on behalf of the writ petitioners, took us through the Usurious Loans Act to show that in British India, even a foreign power was alive to the fact that courts need to interdict excessive rates of interest, and have been given complete freedom to do so, depending on the facts of each case, including taking into account the plight of the farmer debtor. He also referred to and relied upon various State Debt Relief Acts, by which every State has recognized this, and has, thus, provided, by way of legislation, that loans and interest thereon either be waived totally or partially or that courts may come to the rescue of the farmer debtor by lowering the rate of interest. According to him, many States adopted the rule of Damdupat so that in no circumstance can interest charged, for any period whatsoever, exceed the principal amount of loan. He strongly relied upon this Court's judgments in Fatehchand Himmatlal & Ors. v. State of Maharashtra etc., (1977) 2 SCC 670 and Pathumma and Ors. v. State of Kerala and Ors. (1978) 2 SCC 1, to show that State Debt Relief Acts have been unsuccessfully challenged in this Court, and are referable to Entry 30, List II of the Seventh Schedule to the Constitution. He referred to the Constituent Assembly Debates to show that that part of Entry 30, List II, which speaks of relief of agricultural indebtedness, was introduced by the Constitution for the first time, not being in the predecessor entry in the Government of India Act, 1935. He also referred to and relied upon a proposed amendment by Shri Shibban Lal Saxena, by which it was sought to place the aforesaid Entry 30 into the Concurrent List, so that Parliament may also have a say in the relief of agricultural indebtedness. However, this was turned down by the Constituent Assembly, so that this subject is exclusively within the domain of the State legislature.

4. He next relied upon a decision of a single Judge of the Andhra Pradesh High Court reported as State Bank of India, In re, AIR 1986 AP 291 and commended its acceptance by us. He then referred to this Court's judgment reported as State Bank of India v. Yasangi Venkateswara Rao (1999) 2 SCC 375. He fairly pointed out that the aforesaid single Judge judgment has been set aside by this Court, but stated that no ratio decidendi was forthcoming from the Supreme Court judgment. This was because paragraph 7 of the aforesaid judgment was both laconic and contained only conclusions without any reasoning. He also argued that the said decision is per incuriam, not having referred to the number of judgments that were relied upon by the learned single Judge. He also pointed out that arguments were made only by the appellant, there being no arguments on behalf of the respondent, and that, therefore, the aforesaid judgment would have no binding effect as a precedent. He took us through the aforestated report of the Parliamentary Standing Committee on Agriculture for the year 2006- 2007 to show that Parliament was alive to the fact that Section 21A ought to be abolished, as it was a very harsh provision which led to farmer suicides on a mass scale.

He also argued that the said provision is violative of Article 14, both in its discriminatory aspect as well as the fact that Section 21A is an arbitrary piece of legislation which needs to be struck down. He also argued that, in any case, as an alternative argument, the said Section should be read down when applied to loans given by banks to the rural agricultural sector.

5. On the other hand, Shri Jayant Bhushan, learned senior counsel appearing on behalf of the Reserve Bank of India, referred us to Article 246 of the Constitution and to several judgments thereunder and stated that Section 21A squarely falls within Entry 45, List I of the Seventh Schedule to the Constitution, which is "banking".

According to him, even if some part of the Section were to incidentally trench upon Entry 30, List II, having regard to the federal paramountcy principle, State legislation under Entry 30, List II must give way to Section 21A and not the other way around. He also argued that the best way of reconciling Entry 30, List II with Entry 45, List I is to say that "relief of agricultural indebtedness" will not include indebtedness to banks. He took us through the counter affidavit of the RBI to show that the RBI was fully alive to the plight of poor farmers, and had taken several measures, including issuance of guidelines, to assist them. While he agreed that this Court's judgment in Yasangi Venkateswara Rao (supra) could have been more elaborate, he argued that paragraph 7 lays down a clear ratio decidendi, and that this Court ought to follow the same. Insofar as the plea of Article 14 is concerned, he argued that there is no pleading in the writ petition stating how Article 14 had been breached, and this being the case, there being a presumption of constitutionality of Section 21A, such presumption had not been rebutted in this case.

6. Ms. Shirin Khajuria, learned counsel who appeared on behalf of the Union of India, painstakingly took us through the provisions of the Banking Regulation Act.

According to her, "relief of agricultural indebtedness", that is in the latter part of Entry 30, List II of the Seventh Schedule to the Constitution, should be read along with "money lending and money lenders" which is the first part of the said entry. This being the case, relief of agricultural indebtedness would apply only to money lenders and money lending and not to banks at all. If the

subject of relief of agricultural indebtedness were not linked to money lending, it would have found itself in a separate entry in the State List, which is not the case. She also relied upon a number of judgments to buttress her submissions, and read copiously from the two counter affidavits filed by the Union of India to show how the Central Government was fully alive to the plight of poor farmers, and had set up expert groups to report on the same.

7. Having heard learned counsel for both parties, it is necessary to first set out the relevant provisions of the Government of India Act, 1935 and the Constitution.

"Government of India Act, 1935 List I- Federal Legislative List

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

List II- Provincial Legislative List

27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.

xxx xxx xxx Constitution of India List I- Union List

45. Banking.

List II- State List

30. Money-lending and money-lenders; relief of agricultural indebtedness.

xxx xxx xxx Article 246. Subject-matter of laws made by Parliament and by the Legislatures of States.

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

8. In order to appreciate the scope of the subject "banking" in Entry 45, List I, we must see first the judicial dicta on the subject. In Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India, (1970) 1 SCC 248 at 279 and 281, this Court stated:

> "31. The expression "banking" is not defined in any Indian statute except in the Banking Regulation Act, 1949. It may be recalled that by Section 5(b) of that Act "banking" means "the accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise, and withdrawable by cheque, draft or otherwise". The definition did not include other commercial activities which a banking institution may engage in.
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> 36. The legislative entry in List I of the Seventh Schedule is "Banking" and not "Banker" or "Banks". To include within the connotation of the expression "Banking" in Entry 45, List I, power to legislate in respect of all commercial activities which a banker by the custom of bankers or authority of law engages in, would result in re-writing the Constitution.

Investment of power to legislate on a designated topic covers all matters incidental to the topic. A legislative entry being expressed in a broad designation indicating the contour of plenary power must receive a meaning conducive to the widest amplitude, subject however to limitations inherent in the federal scheme which distributes legislative power between the Union and the constituent units. The field of "banking" cannot be extended to include trading activities which not being incidental to banking encroach upon the substance of the entry "trade and commerce" in List II." In Union of India v. Delhi High Court Bar Assn., (2002) 4 SCC 275 at 285-286, this Court was faced with the constitutional validity of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In repelling the contention that the said Act would not fall under Entry 45, List I, this Court held:

> "14. The Delhi High Court and the Guwahati High Court have held that the source of the power of Parliament to enact a law relating to the establishment of the Debts Recovery Tribunal is Entry 11-A of List III which pertains to "administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts". In our opinion, Entry 45 of List I would cover the types of legislation now enacted. Entry 45 of List I relates to "banking". Banking operations would, inter alia, include accepting of loans and deposits, granting of loans and recovery of the debts due to the bank. There can be little doubt that under Entry 45 of List I, it is Parliament alone which can enact a law with regard to the conduct of business by the banks. Recovery of dues is an essential function of any banking institution. In exercise of its legislative power relating to banking, Parliament can provide the mechanism by which monies due to the banks and financial institutions can be recovered. The Tribunals have been set up in regard to the debts due to the banks. The special machinery of a Tribunal which has been constituted as per the preamble

of the Act, "for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto" would squarely fall within the ambit of Entry 45 of List I. As none of the items in the lists are to be read in a narrow or restricted sense, the term "banking" in Entry 45 would mean legislation regarding all aspects of banking including ancillary or subsidiary matters relating to banking. Setting up of an adjudicatory body like the Banking Tribunal relating to transactions in which banks and financial institutions are concerned would clearly fall under Entry 45 of List I giving Parliament specific power to legislate in relation thereto." It can, thus, be seen that Entry 45, List I has been construed widely as including not only banking, but all aspects incidental or ancillary to banking, so long as the field of "banking" does not trench upon trading activities not incidental to banking, which would fall under Entry 26, List II.

9. At this stage, it will be important to advert to certain other judgments of this Court dealing with the expression "banking" vis-à-vis other entries in the State List. Thus, in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna, AIR 1947 PC 60 at 65, the Privy Council expounded the doctrine of pith and substance, and ultimately found that, on a proper reading of the entries concerned, there would be no clash between the Bengal Money Lenders Act, 1940, which was referable to the State List, and the Federal entries dealing with promissory notes and banking. Thus, the Court held:

"35. Moreover, the British Parliament when enacting the Indian Constitution Act had a long experience of the working of the British North America Act and the Australian Commonwealth Act and must have known that it is not in practice possible to ensure that the powers entrusted to the several legislatures will never overlap. As Sir Maurice Gwyer C.J. said in Subramanyan Chettiar v. Muttuswami Goundan, 1940 FCR 188 at 201:

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind observance to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere.

Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its pith and substance or its true nature and character for the purpose of determining whether it is legislation with respect to matters in this list or in that."

36. Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to provincial as well as to Dominion legislation. No doubt experience of past difficulties has made the provisions of the

> Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provisions should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two or even by arranging for a hierarchy of jurisdictions.
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> 37. Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with.
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> 38. Thirdly, the extent of the invasion by the provinces into subjects enumerated in the Federal List has to be considered. No doubt it is an important matter, not, as their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the pith and substance of the impugned Act. Its provisions may advance so far into Federal territory as to show that its true nature is not concerned with provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money lending but promissory notes or banking? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content.
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> 39. This view places the precedence accorded to the three lists in its proper perspective. No doubt where they come in conflict List I has priority over Lists III and II and List III has priority over List II, but the question still remains, priority in what respect? Does the priority of the Federal legislature prevent the provincial legislature from dealing with any matter which may incidentally affect any item in its list or in each case has one to consider what the substance of an Act is and, whatever its ancillary effect, attribute it to the appropriate list according to its true character?

In their Lordships' opinion the latter is the true view.

40. If this be correct it is unnecessary to determine whether the jurisdiction as to promissory notes given to the Federal legislature is or is not confined to negotiability. The Bengal Money Lenders Act is valid because it deals in pith and substance with money lending, not because legislation in respect of promissory notes by the Federal legislature is confined to legislation affecting their negotiability—a matter as to which their Lordships express no opinion.

41. It will be observed that in considering the principles involved their Lordships have dealt mainly with the alleged invalidity of the Act, based on its invasion of the Federal entry, "promissory notes" Item (28) in List I. They have taken this course, because the case was so argued in the courts in India.

42. But the same considerations apply in the case of banking. Whether it be urged that the Act trenches on the Federal list by making regulations for banking or promissory notes, it is still an answer that neither of those matters is its substance and this view is supported by its provisions exempting scheduled and notified banks from compliance with its requirements." (Emphasis Supplied) In Virendra Pal Singh v. Distt. Asstt. Registrar, Coop.

Societies, (1980) 4 SCC 109 at 113-114, the aforesaid judgment was followed and the U.P. Cooperative Societies Act, 1965, insofar as it dealt with Cooperative banks, was held to be within the sphere of the State List.

This Court held:

> "9. It was strenuously contended by the learned Counsel for the petitioners in some of the cases that the U.P. Cooperative Societies Act, 1965, insofar as it was sought to be made applicable to cooperative banks was beyond the competence of the State Legislature. The argument was that while the subject "cooperative societies" was included in Entry 32 of List II, "banking" was a distinct entry by itself in List I of the 7th Schedule (Entry 45) and therefore, the State Legislature was incompetent to legislate in regard to banking by "cooperative societies". There is no substance whatever in this submission. Entry

43 of List I is "incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including cooperative societies". Entry 44 is "incorporation, regulation and winding up of corporations whether trading or not, with objects not confined to one State, but not including universities". Entry 45 is "banking". Entry 32 of List II is, "incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies".

10. We do not think it necessary to refer to the abundance of authority on the question as to how to determine whether a legislation falls under an entry in one list or another entry in another list. Long ago in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd. [74 IA 23] the Privy Council was confronted with the question whether the Bengal Money-Lenders Act fell within Entry 27 in List II of the Seventh Schedule to the Government of India Act, 1935, which was "money-lending", in respect of which the provincial legislature was competent to legislate, or whether it fell within Entries 28 and 38 in List I which were "promissory notes" and "banking" which were within the competence of the Central Legislature. The argument was that the Bengal Money-Lenders Act was beyond the competence of the provincial legislature insofar as it dealt with promissory notes and the business of banking. The Privy Council upheld the vires of the whole of the Act because it dealt, in pith and substance, with money-lending. They observed:

> "Subjects must still overlap, and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found.

If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with." Examining the provisions of the U.P. Cooperative Societies Act in the light of the observations of the Privy Council we do not have the slightest doubt that in pith and substance the Act deals with "cooperative societies". That it trenches upon banking incidentally does not take it beyond the competence of the State Legislature. It is obvious that for the proper financing and effective functioning of cooperative societies there must also be cooperative societies which do banking business to facilitate the working of other cooperative societies. Merely because they do banking business such cooperative societies do not cease to be cooperative societies, when otherwise they are registered under the Cooperative Societies Act and are subject to the duties, liabilities and control of the provisions of the Cooperative Societies Act. We do not think that the question deserves any more consideration and, we, therefore, hold that the U.P. Cooperative Societies Act was within the competence of the State Legislature. This was also the view taken in Nagpur District Central Cooperative Bank Ltd. v. Divisional Joint Registrar, Cooperative Societies [AIR 1971 Bom 365 : 1971 Mah LJ 932] and Sant Sadhu Singh v. State of Punjab [AIR 1970 P&H 528]." (Emphasis Supplied) Similarly, in Harish Tara Refractories (P) Ltd. v.

Certificate Officer, Sader Ranchi, (1994) 5 SCC 324, this Court held that the Bihar and Orissa Public Demands Recovery Act, 1914 was referable to Entries 11A and 13 of the Concurrent List and not to Entry 45, List I.

10. We now come to some of the judgments strongly referred to and relied upon by Shri Parikh. In Fatehchand (supra), several pleas were taken to invalidate the Maharashtra Debt Relief Act of 1976. Insofar as legislative competence was concerned, this Court held:

"54. What then is the incompetence of the State Legislature? Shri B. Sen urged that the wiping out of private debts which formed the capital assets of the moneylenders — one of the main things done by the Debt Act — was not in any of the legislative Lists and even if Parliament had residuary power under Entry 97 of List I, the State had none. Entry 30 in List II is "Money lending and moneylenders;

relief of agricultural indebtedness". If commonsense and common English are components of constitutional construction, relief against loans by scaling down, discharging, reducing interest and principal, and staying the realisation of debts will, among other things, fall squarely within the topic. And that, in a country of hereditary indebtedness on a colossal scale! It is commonplace to state that legislative heads must receive large and liberal meanings and the sweep of the sense of the rubrics must embrace the widest range. Even incidental and cognate matters come within their purview. The whole gamut of Money lending and debt-liquidation is thus within the State's legislative competence. The reference to the Rajahmundry Electricity case [Rajamundry Electric Supply Corporation v. State of Andhra, AIR 1954 SC 251 : 1954 SCR 779] is of no relevance. Nor is the

absence of the expression "relief" in Entry 30, List II, of any moment when relief from moneylenders is eloquently implicit in the topic. Sometimes, arguments have only to be stated to be rejected." (at page 693) (Emphasis Supplied) Similarly, in Pathumma (supra), this Court was concerned with a challenge to the constitutional validity of Section 20 of the Kerala Debt Agriculturists Relief Act, 1970, which entitled debtors to recover properties sold to purchasers in execution of decrees. This Court, after referring to Fatehchand (supra) in some detail, held:

> "36. The avowed object of the Act seems to give substantial relief to the agriculturist debtors in order to get back their property and earn their livelihood. This is undoubtedly a laudable object and the Act is a piece of social legislation. As the decree-holder who had purchased the property is fully compensated by being paid the amount for which he had purchased the property, it cannot be said that his right to hold the property has been completely destroyed. The purchaser gets the property at a distress sale and is fully aware of the pitiable conditions under which the debtor was unable to pay the debt. In a Constitution which is wedded to a social pattern of society the purchaser must be presumed to have the knowledge that any social legislation for the good of a particular community or the people in general can be brought forward by Parliament at any time. The Act, however, does not take away the property of the purchaser without paying him due compensation. It is true that Section 20(2)(b) provides for payment of the purchase money by instalments, but no exception can be taken to this fact as in view of the poverty of the debtor it is not possible for him to pay the debt in a lump sum and as the legislation is for a particular community the provision for payment by instalments cannot be said to work serious injustice to the decree-holder purchaser. A stranger auction purchaser has been treated differently because he had nothing to do with the decree and is enjoined to return the property to the agriculturist debtor on payment of entire amount in lump sum without insisting on instalments. Thus, in short, the position is that the object of the Act is to protect the poor distressed agriculturist debtors from the clutches of greedy creditors who have grabbed the properties of the debtors and deprived the debtors of their main source of sustenance." (at page 22) In dealing with legislative competence, this Court upheld Section 20 in the following terms:-
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> "56. It is Article 246 of the Constitution which deals with the subject-matter of the laws to be made by the Parliament and the Legislatures of the States. Clause (3) of the Article provides that subject to clauses (1) and (2) of the Article with which we are not concerned the Legislature of the State has "exclusive power to make laws..... with respect to any of the matters enumerated in List II". Entry 30 of the List specifically states the following matters as being within the competence of the State Legislature,— 30 —Money-lending and money-lenders;

relief of agricultural indebtedness. It is therefore quite clear, and is beyond controversy, that the Act which provides for "the relief of indebted agriculturists in the State of Kerala" is within the competence of the State Legislature. Clause (1) of Section 2 of the Act defines an "agriculturist", clause (4) defines a "debt", clause (5) defines a "debtor" and the two Explanations to Section 20

define the expressions "court" and "judgment-debtor" and give an extended meaning to the expression "agriculturist" so as to include a person who would have been an agriculturist but for the sale of his immovable property. The other sections provide for the settlement of the liabilities and payment of the debt (along with the interest) of an agriculturist, including the setting aside of the sale in execution of a decree and the bar of suits. The subject- matter of the Act is therefore clearly within the purview of Entry 30 and Counsel for the appellants have not been able to advance any argument which could justify a different view. Reference in this connection may be made to this Court's decision in Fatehchand Himmatlal v. State of Maharashtra [(1977) 2 SCC 670 : (1977) 2 SCR 828]. It has however been argued that the entry would not permit the making of a law relating to the debt of an agriculturist which has already been paid by sale of his property in execution of a decree and is not a subsisting debt.

57. It is true that Section 20 of the Act provides for the setting aside of any sale of immovable property in which an agriculturist had an interest, if the property had been sold, inter alia, in execution of any decree for the recovery of a debt: (a) on or after November 1, 1956, or (b) before November 1, 1956, but possession whereof has not actually passed before November 20, 1957, from the judgment-debtor to the purchaser, and the decree-holder is the purchaser, on depositing one-half of the purchase money together with the cost of the execution etc. The section therefore deals with a liability which had ceased and did not subsist on the date when the Act came into force. But there is nothing in Entry 30 of List II to show that it will not be attracted and would not enable the State Legislature to make a law simply because the debt of the agriculturist had been paid off under a distress sale. The subject-matter of the entry is "relief of agricultural indebtedness" and there is no justification for the contention that it is confined only to subsisting indebtedness and would not cover the necessity of providing relief to those agriculturists who had lost their immovable property by court sales in execution of the decree against them and had been rendered destitute. Their problem was in fact more acute and serious, for they had lost the wherewithal of their livelihood and were reduced to a state of penury. An agriculturist does not cease to be an agriculturist merely because he has lost his immovable property, and it cannot be said that the State is not interested in providing him necessary relief merely because he has lost his immovable property. On the other hand his helpless condition calls for early solution and it is only natural that the State Legislature should think of rehabilitating him by providing the necessary relief under an Act of the nature under consideration in these cases. There is in fact nothing in the wordings of Entry 30 to show that the relief contemplated by it must necessarily relate to any subsisting indebtedness and would not cover the question of relief to those who have lost the means of their livelihood because of the delay in providing them legislative relief. It is well- settled, having been decided by this Court in Navinchandra Mafatlal v. CIT [AIR 1955 SC 58 : (1955) 1 SCR 829 : (1954) 26 ITR 758] , that "in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude". This has to be so lest a legislative measure may be lost for mere technicality." (at pages 31-32) (Emphasis Supplied)

11. This brings us to the sweep of the Banking Regulation Act, and to whether the said Act, which includes by way of amendment Section 21A, can be said to fall within Entry 45, List I of the Seventh Schedule to the Constitution. The relevant provisions of the Banking Regulation Act, which are

necessary for us to decide the present writ petition, are as follows:

> "3. Act to apply to co-operative societies in certain cases.-
>
> Nothing in this Act shall apply to.-
>
> (a) a primary agricultural credit society;
>
> (b) a co-operative land mortgage bank; and
>
> (c) any other co-operative society, except in the manner and to the extent specified in Part V. xxx xxx xxx
>
> 5. Interpretation In this Act, unless there is anything repugnant in the subject or context, -

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;

(c) "banking company" means any company which transacts the business of banking in India;

Explanation.--Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

(d) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act;

xxx xxx xxx

6. Forms of business in which banking companies may engage (1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely:

> (a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on

commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;

(b) acting as agents for any Government or local authority or any other person or persons;

the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a Managing Agent or Secretary and Treasurer of a company;

(c) contracting for public and private loans and negotiating and issuing the same;

(d) the effecting, insuring, guaranteeing, underwriting, participating in Managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) carrying on and transacting every kind of guarantee and indemnity business;

(f) Managing, selling and realising any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;

(h) undertaking and executing trusts;

(i) undertaking the administration of estates as executor, trustee or otherwise;

(j) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex- employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(l) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(m) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section;

(n) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;

(o) any other form of business which the Central Government may, by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company shall engage in any form of business other than those referred to in sub-section (1).

xxx xxx xxx

22. Licensing of banking companies (1) Save as hereinafter provided, no company shall carryon banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject of such conditions as the Reserve Bank may think fit to impose.

xxx xxx xxx

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

> (a) throughout this Act, unless the context otherwise requires,-
>
> (i) references to a “banking company” or “the company” or “such company” shall be construed as references to a co-operative bank;
>
> (ii) references to “commencement of this Act” shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);” There can be no doubt that the Banking Regulation Act deals with the subject “banking” insofar as it licenses banking companies, as defined, and cooperative banks, and seeks to regulate them. Section 21A, though by way of amendment, is undoubtedly an integral part of the aforesaid Act relating to the interdict on the reopening of loan transactions between a banking company and its debtor, on the ground that the rate of interest charged is excessive. There can be no doubt that a law relating to indebtedness of a debtor to a banking company and the interdict against a court reopening any such transaction, on the ground that interest charged by the banking company is excessive, would relate to the business of

banking. We must not forget that the entries in the Lists to the Seventh Schedule have to be read in the widest possible manner, and we have seen from the judgments quoted by us above that the expression "banking" contained in Entry 45, List I is to be given a wide meaning. There can be no doubt that the statute as a whole and the aforesaid Section does fall within Entry 45, List I.

12. The effect of the aforesaid Section is to put out of harm's way the Usurious Loans Act and all State Debt Relief Acts. The Usurious Loans Act was enacted in 1918;

its object being to confer on Courts in India an equitable jurisdiction in cases relating to unconscionable usurious contracts. Section 2(1) and 2(2) define "interest" and "loan" respectively in the widest terms as under:

"2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,-

(1) "interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise. (2) "loan" means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan." Section 3, which is the operative Section in the said Act, reads as follows:-

"3. Reopening of transaction.

Notwithstanding anything in the Usury Laws Repeal Act, 1855 (28 of 1855), where, in any suit to which this Act applies, whether heard ex parte or otherwise, the Court has reason to believe,-

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties thereto substantially unfair, the Court may exercise all or any of the following powers, namely may,-

(i) re-open the transaction, take an account between the parties and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

Provided that, in the exercise of these powers, the Court shall not-

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the date of the transaction;

(ii) do anything which affects any decree of a Court.

Explanation.- In the case of a suit brought on a series of transactions the expression "the transaction" means, for the purposes of proviso (i), the first of such transactions. (2) (a) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation.- Interest may of itself be sufficient evidence that the transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security.

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was bona fide, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, the word "notice" shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act, 1882 (4 of 1882).

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court."

13. It can be seen that very wide powers are given to Courts, inter alia, to scale down rates of interest considering a whole host of factors, including the financial condition of the debtor. State Debt Relief Acts, as has been stated hereinabove, go even further and not only relate to scaling down of excessive rates of interest, but also, in certain cases, grant a waiver of the interest, either wholly or partially, and of the principal sum of the loan, either wholly or partially. There can be no doubt whatsoever that, as has been held in Fatehchand (supra) and Pathumma (supra), the State Debt Relief Acts are validly made under Entry 30, List II of the Seventh Schedule to the Constitution.1

14. The questions, therefore, which arise before us are:

> Ms. Khajuria relied upon State Bank of Travancore v. Mohammed Mohammed Khan, 1982 (1) SCR 338 at 348, for the proposition that banks were excluded from the Kerala Agriculturists' Debt Relief Act of 1970 because, unlike money lenders, they do not exploit needy agriculturists and impose upon them harsh and onerous terms, while granting loans to them. While this may have been the perception in the year 1982, the perception in the years after 1982 has altered as several recent State Debt Relief Acts include relief against loans granted by banks. For instance, the Kerala Farmers' Debt Relief Commission Act, 2006 defines "debt" as including liabilities, inter alia, due to institutional creditors and cooperative societies, and further defines "institutional creditors" to include the State Bank of India, its subsidiaries and "any scheduled bank". The same is the position in the Telangana State Commission for Debt Relief (Small Farmers, Agricultural Labourers and Rural Artisans) Act, 2016. Sections 11 and 12 of both Acts read:
>
> "11. Bar of suits, applications and other proceedings. No suit for recovery of debt shall be instituted, or application for execution of a decree in respect of a debt shall be made against a farmer described in clause (b) of sub-section (1) of section 5 and no appeal, revision petition or application for review against any decree or order in any such suit or application shall be presented or made against such a farmer in any Civil Court, or Tribunal or other authority, and such suits, applications, appeals and petitions instituted or made against such a farmer before the date of declaration of a district or part thereof as a distress affected area and pending on such date shall stand stayed, for such period as the Commission may recommend in that behalf." "12. Payment of debt in instalments (1) Notwithstanding anything contained in any law or

> contract or in any decree or order of any Court or Tribunal, a farmer described in clause (b) of sub- section (1) of section 5 may discharge his debts in suitable instalments together with fair rate of interest as recommended by the Commission on the principal amount outstanding at the time of each payment, in the manner as may be directed by the Commission and on payment of the same in the manner directed by the Commission, the whole debt shall be deemed to be discharged. (2) Where any instalment of a debt is not paid on the due date i. What is the scope of Entry 45, List I vis-à-vis Entry 30, List II of the Seventh Schedule to the Constitution?

ii. Whether Section 21A can be said to prevail over State Debt Reliefs Acts in the event of a clash between the two?

In order to answer these questions, we have to consider the arguments of Ms. Shirin Khajuria and Mr. Bhushan.

15. According to Ms. Khajuria, the expression "relief of agricultural indebtedness" must take colour from the expression "money lending and money lenders" preceding it in Entry 30, List II of the Seventh Schedule.

We are afraid we cannot agree for several reasons.

Firstly, purely grammatically, a semicolon separates the two expressions showing that they are not inextricably connected. Also, we have already adverted to several judgments, including Pathumma (supra), which state that as directed by the Commission, the creditor shall be entitled to recover the same in the manner as may be determined by the Commission:

> Provided that, before taking decision by the Commission under this section, the farmer shall be given an opportunity of being heard." the widest and the most liberal possible meaning must be given to Entry 30, List II of the Seventh Schedule. The latter part of this entry cannot be narrowed down by any rule of noscitur a sociis, or taking colour from the former part of the entry.2 In fact, various State Acts were already in existence at the time of the Constitution, which dealt with the subject of relief of agricultural indebtedness from the point of view of the money lender. See, for instance, Sections 8 and 9 of the Assam Money-Lenders Act, 1934, Sections 9 and 10 of the Central Provinces Money-
>
> Lenders Act, 1934, Sections 11 and 12 of the Bihar Money-Lenders Act, 1938, Sections 9, 10 and 11 of the Orissa Money-Lenders Act, 1939, Sections 31 and 36 of the Bengal Money-Lenders Act, 1940 and Sections 23, 24 and 29 of the Bombay Money-Lenders Act, 1946.
>
> Obviously, the addition of the subject "relief of agricultural In Special Reference No.1 of 2001, (2004) 4 SCC 489, the expression "gas and gas works" contained in Entry 25, List II was read in a manner that "gas" must take colour from the expression "gas

works". It is clear that this was because natural gas was excluded from the said entry and was, in fact, part of Entry 53, List I, being within the expression "petroleum". It would not be possible to extend such an interpretation to a subject matter which is not directly linked with another subject matter contained in the same entry.

indebtedness", for the first time, by the Constitution would refer to relief of agricultural indebtedness not only from money lenders, but also from all persons who give loans including banks. For otherwise, the subject matter "relief of agricultural indebtedness" would have been subsumed within "money lending and money lenders" and would have been wholly unnecessary to add as a subject matter separate and distinct from "money lending and money lenders". That "money lending and money lenders" is separate and distinct from "relief of agricultural indebtedness" is also clear from the fact that money lending is not restricted to the agricultural sector, but would include, within its scope, money lent to all persons, including purely commercial transactions. Also, there are many subjects in the Seventh Schedule which are contained in one entry, but which deal with divergent matters. For example Entry 5, List III deals with seven completely different subjects, all banded together under Entry 5 and separated by semicolons, making it clear that each subject matter is separate and distinct from what follows each semicolon.3 Similarly, Entry 6, List III deals with transfer of property other than agricultural land, separated by a semicolon from registration of deeds and documents.4 Entry 12, List III deals with evidence and is, thus, separated by a semicolon from recognition of laws, public acts and records and judicial proceedings. 5 Obviously, there is no scientific method involved in placing subjects in the various entries in the lists contained in the Seventh Schedule to the Constitution. Ms. Khajuria's alternate plea that "relief of agricultural indebtedness" would otherwise be in a separate entry by itself must also, therefore, be rejected. Also, the object of the relief of agricultural indebtedness is to free the farmer from the bonds of debts incurred, inter alia, due to adverse natural Entry 5, List III: Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

Entry 6, List III: Transfer of property other than agricultural land; registration of deeds and documents.

Entry 12, List III: Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.

causes, and debt relief would be necessary in the case of adverse natural causes whatever be the source of the debt availed. If Ms. Khajuria is right, a farmer would then be protected only against moneylenders, but not banks, which would denude the entry of most of its content.

16. The real question that arises is how are Entry 45, List I and Entry, 30 List II to be harmonized. Shri Bhushan has relied strongly upon Article 246 of the Constitution which, according to him, lays down the federal supremacy principle. According to him, the said principle extends to edging out State legislation altogether, where reconciliation is not possible. The scope of Article 246 has been dealt with in many judgments. In Hoechst Pharmaceuticals Ltd. v. State of Bihar, (1983) 3 SCR 130 at 162-63 and 165-66, this Court laid down the federal supremacy principle thus:

> "It is obvious that Article 246 imposes limitations on the legislative powers of the Union and State legislatures and its ultimate analysis would reveal the following essentials:
>
> 1. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I notwithstanding anything contained in clauses (2) and (3). The non obstante clause in Article 246(1) provides for predominance or supremacy of Union legislature. This power is not encumbered by anything contained in clauses (2) and (3) for these clauses themselves are expressly limited and made subject to the non obstante clause in Article 246 (1). The combined effect of the different clauses contained in Article 246 is no more and no less than this: that in respect of any matter falling within List I, Parliament has exclusive power of legislation.
>
> 2. The State legislature has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule and it also has the power to make laws with respect to any matters enumerated in List III.

The exclusive power of the State legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject to clause (1) i.e. the exclusive power of Parliament to legislate with respect to matters enumerated in List I. As a consequence, if there is a conflict between an entry in List I and an entry in List II which is not capable of reconciliation, the power of Parliament to legislate with respect to a matter enumerated in List II must supersede pro tanto the exercise of power of the State legislature.

3. Both Parliament and the State legislature have concurrent powers of legislation with respect to any of the matters enumerated in List III.

xxx xxx xxx The words "notwithstanding anything contained in clauses (2) and (3)" in Article 246(1) and the words "subject to clauses (1) and (2)" in Article 246(3) lay down the principle of federal supremacy viz. that in case of inevitable conflict between Union and State powers, the Union power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III, and in case of overlapping between Lists II and III, the former shall prevail. But the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an "irreconcilable" conflict between the entries in the Union and State Lists. In the case of a seeming conflict between the entries in the two Lists, the entries should be read together without giving a narrow and restricted sense to either of them. Secondly, an attempt should be made to see whether

the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. It should be considered whether a fair reconciliation can be achieved by giving to the language of the Union Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the State Legislative List a meaning which it can properly bear. The non obstante clause in Article 246(1) must operate only if such reconciliation should prove impossible. Thirdly, no question of conflict between the two Lists will arise if the impugned legislation, by the application of the doctrine of "pith and substance" appears to fall exclusively under one list, and the encroachment upon another list is only incidental.

xxx xxx xxx With regard to the interpretation of non obstante clause in Section 100(1) of the Government of India Act, 1935 Gwyer, C.J. observed:

> "It is a fundamental assumption that the legislative powers of the Centre and Provinces could not have been intended to be in conflict with one another and, therefore, we must read them together, and interpret or modify the language in which one is expressed by the language of the other." "In all cases of this kind the question before the Court", according to the learned Chief Justice is not "how the two legislative powers are theoretically capable of being construed, but how they are to be construed here and now".
>
> (Emphasis Supplied) To similar effect is the judgment cited by Shri Bhushan, Sudhir Chandra Nawn v. WTO, (1969) 1 SCR 108 at 113, where the Court held:
>
> "Exclusive power to legislate conferred upon Parliament is exercisable, notwithstanding anything contained in clauses (2) & (3), that is made more emphatic by providing in clause (3) that the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule, but subject to clauses (1) and (2).

Exclusive power of the State Legislature has therefore to be exercised subject to clause (1) i.e. the exclusive power which the Parliament has in respect of the matters enumerated in List I. Assuming that there is a conflict between Entry 86 List I and Entry 49 List II, which is not capable of reconciliation, the power of Parliament to legislate in respect of a matter which is exclusively entrusted to it must supersede pro tanto the exercise of power of the State Legislature." (Emphasis Supplied) It can, thus, be seen that Article 246 only states that where two entries in the Union List and the State List, respectively, have a head-on collision and are irreconcilable, then, as a last resort, the entry in the State List is to give way to the entry in the Union List. But, this is only as a last resort. First, it is incumbent upon the Court to harmonise the entries, if possible, by giving effect to both and not rendering any one of them otiose. Thus, in Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., 1962 Supp (3) SCR 1 at 13, 17-19, the Court, held:

> "The power to legislate is given to the appropriate legislatures by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation:

> they demarcate the area over which the appropriate legislatures can operate. It is also well settled that widest amplitude should be given to the language of the entries. But some of the entries in the different Lists or in the same List may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them.
>
> xxx xxx xxx Entry 24 in List II in its widest amplitude takes in all industries, including that of gas and gas- works. So too, Entry 25 of the said List comprehends gas industry. There is, therefore, an apparent conflict between the two entries and they overlap each other. In such a contingency the doctrine of harmonious construction must be invoked. Both the learned counsel accept this principle. While the learned Attorney-General seeks to harmonize both the entries by giving the widest meaning to the word "industry" so as to include the industrial aspect of gas and gas- works and leaving the other aspects to be covered by Entry 25, learned counsel for the contesting respondents seeks to reconcile them by carving out gas and gas-works in all its aspects from Entry 24. If industry in Entry 24 is interpreted to include gas and gas-

works, Entry 25 may become redundant, and in the context of the succeeding entries, namely, Entry 26, dealing with trade and commerce, and Entry 27, dealing with production, supply and distribution of goods it will be deprived of all its contents and reduced to "useless lumber". If industrial, trade, production and supply aspects are taken out of Entry 25, the substratum of the said entry would disappear: in that event we would be attributing to the authors of the Constitution ineptitude, want of precision and tautology. On the other hand, the alternative contention enables Entries 24 and 25 to operate fully in their respective fields: while Entry 24 covers a very wide field, that is, the field of the entire industry in the State, Entry 25, dealing with gas and gas-works, can be confined to a specific industry, that is, the gas industry. There may be many good reasons for the authors of the Constitution giving separate treatment to gas and gas-works. If one can surmise, it may be that, as the industry of gas and gas-works was confined to one or two States and was not of all-India importance, it was carved out of Entry 24 and given a separate entry, as otherwise if a declaration by law was made by Parliament within the meaning of Entry 7 or Entry 52 of List I, it would be taken out of the legislative power of States. Be it as it may, the express intention of the Constitution is to treat it, in normal times, as a state subject and it is not in the province of this Court to ascertain and scrutinize the reasons for doing so. It is suggested that this interpretation would prevent Parliament to make law in respect of gas and gas-works during war or other national emergency. Apart from the relevancy of such a consideration, the apprehension has no justification, for under Article 249 Parliament is enabled to take up for legislation any matter which is specifically enumerated in List II whenever the Council of States resolves by two-thirds majority that such a legislation is necessary or expedient in the national interest. So too, under Article 250 Parliament can make laws with respect to any of the matters enumerated in the State List, if a proclamation of emergency is in operation. Article 252 authorizes the Parliament to legislate for two or more States, if the Houses of the legislatures of those States give their consent to the said course. Subject to such emergency or extraordinary powers, the entire industry of gas and gas-works is within the exclusive legislative competence of a State. It is, therefore, clear that the scheme of harmonious construction

suggested on behalf of the State gives full and effective scope of operation for both the entries in their respective fields, while that suggested by learned counsel for the appellant deprives Entry 25 of all its content and even makes it redundant. The former interpretation must, therefore, be accepted in preference to the latter. In this view, gas and gas-works are within the exclusive field allotted to the States. On this interpretation the argument of the learned Attorney-General that, under Article 246 of the Constitution, the legislative power of State is subject to that of Parliament ceases to have any force, for the gas industry is outside the legislative field of Parliament and is within the exclusive field of the legislature of the State. We, therefore, hold that the impugned Act was within the legislative competence of the West Bengal Legislature and was, therefore, validly made." (Emphasis Supplied)

17. At this stage, it is important to advert to a judgment of this Court in Central Bank of India v. Ravindra, (2002) 1 SCC 367 at 402. This judgment states:

> "55. During the course of hearing it was brought to our notice that in view of several usury laws and debt relief laws in force in several States private moneylending has almost come to an end and needy borrowers by and large depend on banking institutions for financial facilities. Several unhealthy practices having slowly penetrated into prevalence were pointed out. Banking is an organised institution and most of the banks press into service long-running documents wherein the borrowers fill in the blanks, at times without caring to read what has been provided therein, and bind themselves by the stipulations articulated by the best of legal brains. Borrowers other than those belonging to the corporate sector, find themselves having unwittingly fallen into a trap and rendered themselves liable and obliged to pay interest the quantum whereof may at the end prove to be ruinous. At times the interest charged and capitalised is manifold than the amount actually advanced. Rule of damdupat does not apply. Penal interest, service charges and other overheads are debited in the account of the borrower and capitalised of which debits the borrower may not even be aware. If the practice of charging interest on quarterly rests is upheld and given a judicial recognition, unscrupulous banks may resort to charging interest even on monthly rests and capitalising the same. Statements of accounts supplied by banks to borrowers many a times do not contain particulars or details of debit entries and when written in hand are worse than medical prescriptions putting to test the eyes and wits of the borrowers. Instances of unscrupulous, unfair and unhealthy dealings can be multiplied though they cannot be generalised. Suffice it to observe that such issues shall have to be left open to be adjudicated upon in appropriate cases as and when actually arising for decision and we cannot venture into laying down law on such issues as do not arise for determination before us. However, we propose to place on record a few incidental observations, without which, we feel, our answer will not be complete and that we do as under:
>
> xxx xxx xxx (6) Agricultural borrowings are to be treated on a pedestal different from others. Charging and capitalisation of interest on agricultural loans cannot be permitted in India except on annual or six-monthly rests depending on the rotation

> of crops in the area to which the agriculturist borrowers belong." (Emphasis Supplied) Given the fact that, at present, agricultural loans are predominantly given by cooperative and other banks to farmers, the method suggested by Shri Bhushan, which is to exclude banks from the entry "relief of agricultural indebtedness", would rob the aforesaid entry of most of its force and render it largely otiose.

18. Another method of reconciling conflicting entries was discussed in Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (P) Ltd., (1963) 3 SCR 209 at 219-220 as follows:

> "The rule of construction is undoubtedly well established that the entries in the Lists should be construed broadly and not in a narrow or pedantic sense. But there is no need for the appellants to call this rule in aid of their contention, as trade and commerce would, in their ordinary and accepted sense, include forward contracts. That was the view which was adopted in Bhuwalka Brothers Ltd. case [AIR (1952) Cal 740] and which commended itself to this Court in Duni Chand Rateria case [(1955) 1 SCR 1071] . Therefore, if the question were simply whether a law on Forward Contracts would be a law with respect to Trade and commerce, there should be no difficulty in answering it in the affirmative. But the point which we have got to decide is as to the scope of the entry "Trade and commerce" read in juxtaposition with Entry 48 of List I. As the two entries relate to the powers mutually exclusive of two different legislatures, the question is how these two are to be reconciled. Now it is a rule of construction as well established as that on which the appellants rely, that the entries in the Lists should be so construed as to give effect to all of them and that a construction which will result in any of them being rendered futile or otiose must be avoided. It follows from this that where there are two entries, one general in its character and the other specific, the former must be construed as excluding the latter. This is only an application of the general maxim that Generalia specialibus non derogant. It is obvious that if Entry 26 is to be construed as comprehending Forward Contracts, then "Futures Markets" in Entry 48 will be rendered useless. We are therefore of opinion that legislation on Forward Contracts must be held to fall within the exclusive competence of the Union under Entry 48 in List I." (Emphasis Supplied)

19. Qua the general entry "banking" under Entry 45, List I, which deals with banks of all kinds and the lending by banks as well as recovery of debts by banks generally, Entry 30, List II, which deals with relief of agricultural indebtedness, is special, for the reason that indebtedness itself is only one species of banking and agricultural indebtedness is a sub-species thereof. The species of indebtedness is within Entry 45, List I, whereas the sub-

species of agricultural indebtedness is within Entry 18, List II. It is only relief of agricultural indebtedness, which is a sub-sub-species of indebtedness, which is relatable to Entry 30, List II. Also, we must at this juncture keep in mind the amendment sought to be moved by Shri Shibban Lal Saxena in the Constituent Assembly to move Draft Entry 34 (i.e. Entry 30), List II to the Concurrent

List.

This was done as follows:

> "Entry 34 Prof.Shibban Lal Saksena: Sir, I beg to move:
>
> "That entry 34 of List II be transferred to List III." This is an important amendment. I would like the House to realise the magnitude of the problem. We all want to wipe out rural indebtedness. Sir, in this connection I would like to read an extract from the People's Plan for Economic Development of India, which runs as follows:
>
> "The other problem that will have to be tackled, along with this problem of the outmoded land tenure system, will be the problem of rural indebtedness. The total rural indebtedness was estimated by the Central Banking Inquiry Committee, in the year 1929, at about 900 crores of rupees. Subsequent estimates have however, put the figure at a much higher level. The estimate according to the report of the Agricultural Credit Department of the Reserve Bank of India in the year 1937 is about 1800 crores of rupees. It is not possible that this might have reduced to any significant extent since the year 1937, nor can the so-called agricultural boom at present be said to have produced very substantial reductions. The money-lender in the country dominates more in that strata of the agricultural population which is relatively worse off." "The boom can hardly be said to have benefited that strata. On the other hand, the debt represents accumulations of decades. The debt legislation in the various provinces has not, admittedly, been able to touch even the fringe of the problem. We feel it necessary, therefore, that the debt should be compulsorily scaled down and then taken over by the State. Experiments made in this direction in the Province of Madras, for example, serve as a useful pointer. Under the working of the Madras Agriculturist' Relief Act of 1938, debts were scaled down by about 47 per cent and the provisions of the Act can, by no logic be characterized as drastic. In the Punjab, under the operations of the Debt Conciliation Boards, debts amounting to 40 lakhs were settled for about 14 lakhs. It should, therefore, be possible and just be considered as necessary to scale down the present debts to about 25 per cent before they are taken over by the State. Assuming the present indebtedness to amount to about Rs. 1,000 crores the debt to be taken over by the State will come to about Rs. 250 crores." The compensation to be paid to the rent- receivers as well as to the usurers will thus amount to Rs. 1985 crores. This should be paid in the form of self-liquidating bonds issued by the State. These should be for a period of 40 years at the rate of interest of 3 per cent and should be compulsorily retained by the State in its possession. The annual payments to be made by the State for these bonds will come to about Rs. 60 crores.
>
> On the carrying out of these initial measures will depend the success of the planned economy for raising the productivity of agriculture in the interests of the cultivators. Unless the status quo is changed in this manner there can be no hope of improving

> the standard of living of the vast bulk of our peasantry, and therefore, no hope of building up an industrial structure in the country on sound, stable and secure foundations. We are aware of the difficulties in the way of carrying out the above measures but we are unnamable to see any alternative to them whatsoever." It is thus obvious that if we really want to remove agricultural indebtedness, the problem cannot be solved merely by action taken by individual States. Only a comprehensive plan and its bold execution with the fullest co- operation of the Union Government with the Government of the states can solve these problems. It is therefore that I have suggested that this entry should be transferred to List III.
>
> Sir, I have tabled my amendment only with this purpose in view. I feel and I am quite convinced that we cannot change the face of our country and we cannot realise the 'India' of our dreams unless we adopt a comprehensive plan and have powers to coordinate the activities of the Centre and the Provinces. I therefore commend my amendment for the earnest consideration of the House.
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> Mr. President: The question is:
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> "That entry 34 of List II be transferred to List Ill." The amendment was negatived.
>
> Mr. President: The question is:
>
> "That entry No. 34 stand part of List II." The motion was adopted.
>
> Entry 34, was added to the State List." (Emphasis Supplied) The amendment was obviously rejected in keeping with the fact that agriculture and aspects of agriculture are exclusively given to the States. This will be clear from Entries 14, 18, 45 to 48 of List II, apart from Entry 30, List II, which read as under:
>
> "14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
>
> 18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents;

transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income.

47. Duties in respect of succession to agricultural land.

48. Estate duty in respect of agricultural land." Entries 82, 86, 87 and 88, List I and Entries 6 and 7, List III also specifically exclude agriculture as follows:

> "82. Taxes on income other than agricultural income.
>
> 86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
>
> 87. Estate duty in respect of property other than agricultural land.
>
> 88. Duties in respect of succession to property other than agricultural land.
>
> xxx xxx xxx
>
> 6. Transfer of property other than agricultural land; registration of deeds and documents.
>
> 7. Contracts including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land." To complete the picture, it is also important to advert to Entry 41, List III, which states as follows:-
>
> "41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property." The constitutional scheme, insofar as agriculture is concerned, is that it is an exclusive State subject to one exception – that the custody, management and disposal of property, declared by law to be evacuee property includes agricultural land, and makes it a concurrent subject.
>
> 20. This being the case, the two entries are best harmonised by giving effect to both. This can only be done if the relief of agricultural indebtedness is to include banks, both cooperative and otherwise. As mentioned earlier, Entry 18, List II gives the States exclusive power to legislate on "land improvement and agricultural loans." Entry 45, List I will remain intact and will have carved out of it the relief of agricultural indebtedness, which, as we have already seen, is a sub-sub-species of indebtedness, which itself is one of many aspects of banking.
>
> 21. We now come to the doctrine of pith and substance and incidental trenching. Having thus delineated the respective spheres of "banking" in Entry 45, List I and "relief of agricultural indebtedness" in Entry 30, List II, we have to view the pith and substance of the Banking Regulation Act as a whole, inclusive of Section 21A.
>
> 22. It has already been held by us that, in pith and substance, the Banking Regulation Act does fall within Entry 45, List I, but given our interpretation of Entry 45, List I and Entry 30, List II of the Seventh Schedule, it is clear that, insofar as relief of

> agricultural indebtedness is concerned, Section 21A certainly trenches upon Entry 30, List II, read in the manner indicated above. As is well settled, the doctrine of pith and substance is only to view a legislation as a whole and see whether, as a whole, it falls within one or other entry of List I or List II of the Seventh Schedule. While thus falling as a whole within one List, certain provisions in a particular Act enacted by one legislature may incidentally trench upon a forbidden field exclusively given to another legislature. What is the position in law with respect to such incidental trenching?
>
> 23. In Subrahmanyan Chettiar v. Muttuswami Goundan, AIR 1941 FC 47, the Federal Court was faced with the constitutional validity of the Madras Agriculturists Relief Act, 1938. Gwyer, CJ, speaking for the majority, found that the Madras Act is an attempt to deal, in a very drastic manner, with the problem of rural indebtedness "which has vexed legislators since the days of Solon".

The precise question that arose before the Federal Court was whether the Madras Act trespassed into the federal field covered by Entry 28, List I, where the Federal legislature has an exclusive power to legislate with respect, inter alia, to promissory notes. Section 79 of the Negotiable Instruments Act, 1881, expressly clashed with the Madras Act in that, in a promissory note where interest at a specified rate is expressly made payable, interest is to be calculated at that rate until payment or until such date after the institution of a suit to recover the amount, as the Court directs. Inasmuch as the Madras Act scales down such interest, a direct clash between the provisions of Madras Act and the Negotiable Instruments Act became inevitable.

24. The majority answered the question by upholding the Madras Act in its entirety as it was an Act, in pith and substance, relatable to "money lending and money lenders" inasmuch as the Madras Act operated not on the promissory note, but on a decree in which the promissory note had merged, and had, thus, become a judgment-

debt. It was held that the Act neither affected nor purported to affect any liability on a promissory note.

25. Having held this, the majority, however, speaking through Gwyer, C.J., said:

> "But though, as I have said, I reserve my opinion upon all of them, I do not wish it to be assumed that I accept in its entirety the view of the Madras High Court that the impugned Act does not really affect the principles embodied in the Negotiable Instruments Act, for, that proposition seems to me much too broadly stated. I doubt whether any provincial Act could, in the form of a debtors' relief Act, fundamentally affect the principle of negotiability, or the rights of a bonafide transferee for value. Perhaps the position is different where the promissory note has never changed hands and is sued upon by the original payee; and it may be (though I do not decide the question) that an Act such as the Court is now considering can operate upon the original debt in such cases, even though the creditor has taken a promissory note in

respect of his debt. If it were otherwise, the power of Provincial Legislatures to enact remedial legislation in a field peculiarly their own would be very greatly hampered; so much so, indeed, that the Central Legislature might well find itself compelled to review the situation. But it would perhaps be inadvisable that I should say more on this occasion." (at page 52) (Emphasis Supplied) Sulaiman, J., however, dissented, and held that as there was a clash between the Madras Act and the Negotiable Instruments Act, the latter would prevail. Despite the fact that the law thus laid down cannot be said to be of persuasive value, being in a dissenting judgment, yet, the learned Judge dealt with the doctrine of incidental trenching in great detail, and followed Canadian cases, summarised by Lord Tomlin in Attorney General for Canada v. Attorney General for British Columbia (1930 A.C. 111 at 118) in four neat propositions on the subject, as follows:

"The doctrine which has been evolved with regard to the Canadian cases is that if the encroachment is merely incidental, then there is no defect so long as the trespass is upon an unoccupied field. Engrafted upon the doctrine of incidental encroachment there is the further doctrine of unoccupied field.

xxx xxx xxx In Jai Gobind Singh v. Lachmi Narain Ram (1940) 3 F.L.J. 46 p. 51, where the amount due on an earlier promissory note had formed part of the mortgage money, I distinguished the case by pointing out that the suit being on a mortgage the field was apparently clear, and, therefore, the question of interfering with the interest due on the promissory note did not directly arise. No Canadian case has been cited before us in which although the subject of legislation was substantially within S. 92, it not only incidentally encroached upon a subject mentioned in S. 91, but at the same time actually clashed with an existing Dominion legislation.6 The principles laid down by their Lordships have gone only so far as to permit an incidental encroachment, provided the Dominion field is unoccupied. In no case so far decided have their Lordships tolerated a trespass as well as a clash. If a clash with the Dominion legislation were also allowed, then a Provincial Legislature would be in a position, Lord Tomlin's fourth proposition, in Attorney General for Canada (supra), namely, "There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear, but if the field is not clear and the two legislations meet the Dominion legislation must prevail", must be read subject to this caveat.

though indirectly, to nullify the Dominion legislation, even inside the field exclusively open to the Dominion, which would make the position intolerable.

xxx xxx xxx The scheme of S. 100 of the Act is to exclude completely from the authority of the Provincial Legislature the power to legislate with respect to subjects in List I. If in consequence of certain difficulties that Provincial Legislatures would experience by a rigid enforcement of such an exclusion we must in interpreting the words "with respect to" import the Canadian doctrine of permissibility of incidental encroachment, we must then at the same time import the other allied

doctrine also that such an encroachment is permissible only when the field is actually unoccupied. It is only in this way that actual clash between the Centre and the Provinces can be avoided, which I think we must. This will also explain the apparent gap in S. 107(1) of the Act, that gap being filled in by the provisions of S. 100." (at pages 62-64) (Emphasis Supplied)

26. However, Shri Bhushan sought to impress upon us that certain observations in Fatehchand (supra) make it clear that the doctrine of incidental trenching and unoccupied field is a one way street, as was held in the dissenting judgment of Sulaiman, J. in Subrahmanyan Chettiar (supra), i.e. that all State legislations have to give way to a Central legislation, even if a Central legislation incidentally trenches upon a State subject, covered by State legislation. He relied upon paragraph 56 in Fatehchand (supra) in particular. Paragraph 56 is part of a long discussion, beginning from paragraph 55 and ending with paragraph 67, which deals with an argument made that that part of the Maharashtra Debt Relief Act, which deals with gold loans, is void because Parliament has occupied the field. This question was answered by referring to Entry 52, List I and Entry 24, List II. It was held that the Industrial Development and Regulation Act, 1951 has occupied the field of the gold industry under Entry 52, List I, as has the Gold Control Act, 1968, and that, therefore, Entry 24, List II, being subject to Entry 52, List I, has become inoperative. This does not however mean that Entry 30, List II, which deals with money lending, has been rendered inoperative and, therefore, the Maharashtra Debt Relief Act, made under Entry 30, List II, would remain intact. The learned Judge also went on to refer to Entries 6 and 7 of List III and to Article 254(2) of the Constitution stating that if it were to be held that the Debt Relief Act related to contracts, then, having received Presidential assent, it would prevail over the aforesaid Central enactments in the State of Maharashtra in light of Article 254(2). It is in this context that the general observation as to Parliamentary paramountcy, in paragraph 56 of the judgment, is made.

Obviously where an entry in List II is itself subject to the corresponding entry in List I and, by the requisite declaration, Parliament occupies the field, the State legislatures are denuded of legislative competence only because the particular entry, namely Entry 24, List II, is expressly subject to Entry 52, List I. This is not the case insofar as Entry 45, List I and Entry 30, List II is concerned.

27. Shri Bhushan then relied upon a concurring judgment of Ranganathan, J. in Federation of Hotels and Restaurants v. Union of India, (1989) 3 SCC 634.

In paragraph 74, the learned Judge, while upholding the Hotel Receipts Tax Act, 1980 held that, in pith and substance, it was referable to Entry 82, List I, being, in substance, a tax on income. In particular, Shri Bhushan relied upon the statement of the law that since Parliament had exclusive power, under Article 246(1) and (3) of the Constitution, to make laws with respect to any of the matters enumerated in List I, if an Act of Parliament is squarely covered by an entry in the Union List, no restriction can be read into the power of Parliament to make laws in regard thereto. This was made in the context of a taxation entry, which as the aforesaid paragraph 74 itself states, refers to the Constitutional scheme which neatly divides the subject matters of tax between the Union and the States, so that there can be said to be no overlapping. There is no discussion in this paragraph of Parliamentary paramountcy in the context of incidental trenching and unoccupied field. This judgment, therefore, does not take the matter very much further.

28. Insofar as Article 246 is concerned, we have already seen how the said Article refers to federal supremacy insofar as the whittling down of a State List entry is concerned, when compared with a Union List entry. Once the spheres of both the entries have been delineated, the doctrine of pith and substance comes in to test whether a particular legislation is referable, as a whole, to an entry in List I or to the competing entry in List II. Once it is found that the legislation as a whole is referable to an entry in List I, but it incidentally encroaches upon an entry in List II, there is no reason for the doctrine of unoccupied field not to apply to federal legislation. The expression "with respect to" appears in all the sub-articles of Article 246, which expression, so far as sub-articles (1) to (3) are concerned, imports the twin doctrines of incidental trenching and unoccupied field, which applies, therefore, to legislation made under sub-articles (1) to (3) of Article 246, thus making it clear that incidental encroachment by Parliament cannot be tolerated when the exclusive field allotted to the State legislature is not unoccupied.

29. The paramountcy principle contained in Article 246, as we have seen, is only taken as a last resort after harmonious construction fails, and, that too, qua entries in competing lists. Once legislation is referable to one list or the other, the doctrine of incidental trenching and unoccupied field would apply equally to both Parliamentary and State legislations. In the very first judgment of the Federal Court, In Re CP & Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938 AIR 1939 FC 1 at 31, Jayakar, J. set out principles that were evolved on a reading of the British North America Act by the Privy Council, which would prove to be a useful guide to the construction of Section 100 of the Government of India Act, 1935, which was the precursor of Article 246 of the Constitution. These principles were set out as follows:

> "(1) That the provisions of an Act like the Government of India Act, 1935, should not be cut down by a narrow and technical construction, but, considering the magnitude of the subjects with which it purports to deal in very few words, should be given a large and liberal interpretation, so that the Central Government, to a great extent, but within certain fixed limits, may be mistress in her own house, as the Provinces, to a great- extent, but again within certain fixed limits, are mistresses in theirs. See Henrietta Muir Edwards v. Attorney-General for Canada (1930 AC 124 at 136 and 137).
>
> (2) In an enquiry like the one before us in this Reference, the Court must ascertain the true nature and character of the challenged enactment, its pith and substance; and not the form alone which it may have assumed under the hand of the draftsman. See Attorney-
>
> General for Ontario v. Reciprocal Insurers (1924 AC 328 at 337).
>
> (3) Where there is an absolute jurisdiction vested in a Legislature, the laws promulgated by it must take effect according to the proper construction of the language in which they are expressed. But where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine, with some strictness, the substance of the legislation, for the purpose of determining what it is

that the Legislature is really doing.

See Attorney-General for Ontario v.

Reciprocal Insurers (1924 AC 328 at 337). (4) Even where there has been an endeavour to give pre-eminence to the Central Legislature in cases of a conflict of powers, it is obvious that, in some cases where this apparent conflict exists, the Legislature could not have intended that powers exclusively assigned to the Provincial Legislature should be absorbed in those given to the Central Legislature." (Emphasis Supplied) Principle 4 is of particular relevance in these cases.

30. Indeed, in a recent judgment of this Court, this has, in fact, been held. In UCO Bank v. Dipak Debbarma, (2017) 2 SCC 585 at 596, this Court held:

> "13. The federal structure under the constitutional scheme can also work to nullify an incidental encroachment made by the parliamentary legislation on a subject of a State legislation where the dominant legislation is the State legislation. An attempt to keep the aforesaid constitutional balance intact and give a limited operation to the doctrine of federal supremacy can be discerned in the concurring judgment of Ruma Pal, J. in ITC Ltd. v. Agricultural Produce Market Committee [ITC Ltd. v. Agricultural Produce Market Committee, (2002) 9 SCC 232], wherein after quoting the observations of this Court in S.R. Bommai v. Union of India [S.R. Bommai v. Union of India, (1994) 3 SCC 1], the learned Judge has gone to observe as follows: (ITC Ltd. case [ITC Ltd. v. Agricultural Produce Market Committee, (2002) 9 SCC 232], SCC p. 282, paras 93-94) "93. ... '276. The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States does not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States.' (S.R. Bommai case [S.R. Bommai v. Union of India, (1994) 3 SCC 1], SCC pp. 216-17, para 276)
>
> 94. Although Parliament cannot legislate on any of the entries in the State List, it may do so incidentally while essentially legislating within the entries under the Union List.

Conversely, the State Legislatures may encroach on the Union List, when such an encroachment is merely ancillary to an exercise of power intrinsically under the State List. The fact of encroachment does not affect the vires of the law even as regards the area of encroachment. [A.S. Krishna v. State of Madras [A.S. Krishna v. State of Madras, AIR 1957 SC 297 : 1957 Cri LJ 409]; Chaturbhai M. Patel v. Union of India [Chaturbhai M. Patel v. Union of India, (1960) 2 SCR 362 :

> AIR 1960 SC 424]; State of Rajasthan v. G. Chawla [State of Rajasthan v. G. Chawla, AIR 1959 SC 544 : 1959 Cri LJ 660] and Ishwari Khetan Sugar Mills (P) Ltd. v. State

of U.P. [Ishwari Khetan Sugar Mills (P) Ltd. v. State of U.P., (1980) 4 SCC 136] This principle commonly known as the doctrine of pith and substance, does not amount to an extension of the legislative fields. Therefore, such incidental encroachment in either event does not deprive the State Legislature in the first case or Parliament in the second, of their exclusive powers under the entry so encroached upon. In the event the incidental encroachment conflicts with legislation actually enacted by the dominant power, the dominant legislation will prevail." (Emphasis Supplied)

14. The aforesaid view in the concurring judgment of Ruma Pal, J. in ITC Ltd. v. Agricultural Produce Market Committee [ITC Ltd. v. Agricultural Produce Market Committee, (2002) 9 SCC 232], seems to have been echoed in a recent pronouncement of this Court in Vishal N. Kalsaria v. Bank of India [Vishal N. Kalsariav. Bank of India, (2016) 3 SCC 762 :

(2016) 2 SCC (Civ) 452], wherein this Court had held that the provisions of the 2002 Act will not have an overriding effect on the provisions of the State Rent Control Acts." This Court then went on to hold that between the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), which was enacted under Entry 45, List I, and the Tripura Land Revenue and Reforms Act, 1960, referable to Entry 18 of List II, SARFAESI would prevail since Section 187 of the Tripura Act (which prohibited banks from transferring property which has been mortgaged by a member of a Scheduled Tribe to any person other than a member of a Scheduled Tribe), is a provision which is outside Entry 18, List II and, therefore, incidentally trenches upon Entry 45, List I. On the facts of the case, therefore, it was found that since legislation had been made by Parliament under Entry 45, List I and the SARFAESI Act dealt exclusively with activities relating to sale of secured assets by banks, Section 187 of the Tripura Act, to the extent it is inconsistent with the SARFAESI Act, must give way.

31. It is also important to notice that paragraph 12 of the aforesaid judgment sets out paragraphs 13 to 15 of the Constitution Bench judgment in Special Reference No.1 of 2001, (2004) 4 SCC 489.7 Shri Bhushan strongly relied upon paragraph 15 of this judgment. It is clear that the entire discussion begins from paragraph 13, which makes it clear that an entry in one list cannot be so interpreted as to cancel or obliterate another entry made in another list and in the case of an apparent conflict, it is the primary duty of the Court to harmonise the two entries. It is only when there is an irreconcilable conflict between two legislations that the Central legislation shall prevail. It is after noticing this statement of the law contained in paragraph 15 of the Constitution Bench judgment in Special Reference No.1 (supra), that the discussion on incidental encroachment in paragraphs 13 and 14, referred to hereinabove, is then laid down by the In this case, a Constitution Bench of this Court had to decide on whether a Gujarat statute, which defined "gas" as being predominantly methane gas, was ultra vires the State legislature. The competing entries were Entry 53, List I and Entry 25, List II. Entry 53, List I dealt, inter alia, with petroleum, whereas Entry 25, List II dealt with gas and gas works. The Constitution Bench went into great detail in considering various Acts, judgments and other authorities, including dictionaries, and held that natural gas fell

within the definition of "petroleum", and further that Entry 25, List II referred only to manufactured gas, as is evident from the expression "gas works", which is defined as "a plant for manufacture of artificial gas". The Constitution Bench was careful to indicate, in paragraph 43 of the judgment, that Entry 25, List II would not be reduced to "useless lumber" as feared by the States, because natural gas was never intended to be covered by that entry, which is given full effect by including gas manufactured and used in gas works.

Court in UCO Bank (supra). Shri Bhushan's reliance on the latter part of paragraph 15 in Special Reference No.1 (supra), to negate what has been stated in paragraphs 13 and 14 of UCO Bank (supra), therefore, holds no water.

32. It is clear from a reading of this judgment that, from the point of view of a State Debt Relief Act, as the legislation is referable to the special entry "relief of agricultural indebtedness" under Entry 30, List II, as opposed to the Banking Regulation Act, under the general entry of "banking" in Entry 45, List I, any incidental encroachment by the Parliamentary statute on Entry 30, List II, read with the State Debt Relief Acts made thereunder, would make Section 21A yield to the State Debt Relief Acts, to the extent that they cover relief of agriculturists from debts due to banks. It is clear that where Section 21A of the Banking Regulation Act incidentally trenches upon the State Debt Relief Acts, enacted under Entry 30, List II, so far as relief of agricultural indebtedness is concerned, where there is State legislation on the same subject matter which directly clashes with Section 21A, Section 21A will have to give way to the State Debt Relief Acts insofar as relief from agricultural indebtedness due to banks is concerned. The non-obstante clause in Section 21A cannot override a State Debt Relief Act in this situation, as Parliament cannot give itself supremacy over State legislation where none exists under the Constitution. If this were not the case, the exclusive power of the States to make laws within List II would become illusory, and "Parliamentary paramountcy" would trap many a beneficent State legislation made within its exclusive domain, contrary to the statement of law laid down by the Privy Council in Prafulla Kumar (supra), and contrary to principle (4) laid down by Jayakar, J. in In Re CP & Berar Sales (supra), both of which have been consistently followed by several judgments of this Court.

33. In fact, a reading of the entries in List II would demonstrate that certain entries in List II are subject to entries in Lists I and III. These are set out hereinbelow:-

> "2. Police (including railway and village police) subject to the provisions of Entry 2-A of List I.
>
> 13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I;

municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I.

22. Courts of wards subject to the provisions of Entry 34 of List I; encumbered and attached estates.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24. Industries subject to the provisions of Entries 7 and 52 of List I.

26. Trade and commerce within the State subject to the provisions of Entry 33 of List III.

27. Production, supply and distribution of goods subject to the provisions of Entry 33 of List III.

33. Theatres and dramatic performances; cinemas subject to the provisions of Entry 60 of List I; sports, entertainments and amusements.

37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List III."

34. Numerically, this would amount to a little over one-

fifth of the total number of entries in List II – 12 out of 66.

35. Certain entries such as Entry 12 exclude from the State List ancient, historical monuments and records declared by law made by Parliament to be of national importance. Entry 12 of List II reads as under:-

> "12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance." Yet another delineation of the legislative power of the States is made by Entries 32 and 63 of List II, which speak of a particular subject and then give a residuary power qua the same subject over matters not specified in List I. "32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty."8

36. All the other entries of the State List give exclusive power to the States to legislate on the subject matters mentioned therein. If Shri Jayant Bhushan's submission is to be accepted, this threefold scheme contained within List II itself would be violated. If Parliamentary legislation Entry 32, List II is to be read with Entries 43 and 44 of List I; and Entry 63, List II is to be read with Entry 91, List I. were to invade an exclusive sphere of the State, and were to prevail over State legislation made within the States' exclusive powers, all the entries of List II would be subjected to entries of List I, which is not the constitutional scheme. Further, only one entry, namely, Entry 12 of List II, specifically excepts ancient and historical monuments and records, if Parliament declares them, by law, to be of national importance. The argument, therefore, that Section 21A is made by Parliament at the national level and is of national importance and must, therefore, prevail over State legislation made within the exclusive subject matters of List II, would again fall foul of the constitutional scheme, in that all the entries of List II would then be subject to Parliamentary law, which is of national importance. Also, Entry 30, List II cannot be read to refer to relief of agricultural indebtedness other than what is specified in List I, as that would be reading into Entry 30 words that are conspicuous by their absence, but which are found in Entries 32 and 63, List II. All this would go to show that where the States have exclusive legislative competence under certain entries of List II, legislation made thereunder cannot be effaced by legislation made under List I, which incidentally trenches upon State legislation made under an exclusive power.

37. We have already seen how agriculture as a subject matter is entirely and exclusively left to the States in all its aspects, save and except evacuee property under Entry 41, List III, which is also left to the States, but concurrently with Parliament, specifically including agricultural land therein. Also, we must not forget that the amendment suggested by Shri Shri Shibban Lal Saxena to make draft Entry 34 (Entry 30 of List II), a concurrent subject, was turned down. Any argument that has the effect of making relief of agricultural indebtedness a concurrent subject by which Parliamentary legislation ousts State legislation must, therefore, also be rejected.

38. This is not to say that Parliament is helpless insofar as relief from agricultural indebtedness to banks is concerned. Article 249 of the Constitution enables Parliament to legislate on the aforesaid subject in the national interest if the Rajya Sabha declares, by a resolution supported by not less than 2/3 rd of the members present and voting, that it is necessary or expedient in national interest that Parliament should do so. Equally, under Article 252 of the Constitution, if the legislatures of two or more States deem it desirable that Parliament should pass an Act for regulating a matter exclusively in the State List, this can be done by resolutions to that effect passed by the legislatures of such States. Also, to implement a treaty, agreement or convention with other countries, Parliament, under Article 253 of the Constitution, has the power to legislate on an exclusive State subject. In an emergency, Parliament can, under Article 250, legislate on matters exclusively reserved for the States under List II. This being the case, we need not be unduly weighed down by Shri Bhushan's argument that, unless we accept his submission, Parliament would be denuded of legislative competence altogether to deal with the subject matter of relief against debts due to banks from the agricultural sector.

39. The next important question is as to whether the judgment of this Court in Yasangi Venkateswara Rao (supra) is binding on this Bench having been delivered by another earlier 2-Judge Bench of this Court.

40. In order to appreciate the answer to this question, it is necessary to indicate what was held by the judgment of the learned Single Judge of the Andhra Pradesh High Court in State Bank of India, In re, (supra). After setting out the Banking Regulation Act and the scope of Section 21A, Section 21A was contrasted with the A.P. Agriculturists Relief Act, 1938, and it was held that the purpose, operation and effect of Section 21A of the Banking Regulation Act is not even remotely connected with the purpose, operation and effect of the A.P. Agriculturists Relief Act, which was held to be a special law enacted to relieve agriculturist debtors. It was further held that charging excessive interest was no longer part of the A.P. Agriculturists Relief Act, and, therefore, the spheres of the two provisions were completely different.

Coming to legislative competence, the learned Judge went into great detail in considering several judgments of the Federal Court, High Courts and this Court, and ultimately held that Section 21A is not a law referable to Entry 45, List I. The learned Judge also went on to hold that Section 21A was arbitrary and violative of Article 14 of the Constitution.

41. By a short judgment in Yasangi Venkateswara Rao (supra), this Court upset the elaborate judgment of the High Court thus:

> "7. We are unable to understand as to how the High Court could come to the conclusion that Parliament had no jurisdiction to enact Section 21-A. There can be no doubt that Section 21- A deals with the question of the rate of interest which can be charged by a banking company. Entry 45 of List I of the Seventh Schedule clearly empowers Parliament to legislate with regard to banking. The enactment of Section 21-A was clearly within the domain of Parliament. The said section applies to all types of loans which are granted by a banking company, whether to an agriculturist or a non- agriculturist, and, therefore, reference by the High Court to Entry 30 of List II was of no consequence. In our opinion, the said Section 21-A had been validly enacted." (at page 377) At first blush, it appears that, though cryptic, the said paragraph does contain reasons for upsetting the High Court judgment. But, on a closer look, it becomes clear that there is no reasoning worth the name for so doing.
>
> Paragraph 7 is a series of conclusions put together without any clear reasoning in support. This is probably because only the learned Additional Solicitor General for the appellant appeared before the Court and argued the case on behalf of the appellant. The respondent, though probably served, did not appear and consequently was not heard. It will also be noticed that, despite the fact that the judgment of the single Judge referred to a very large number of High Court, Federal Court, Privy Council and Supreme Court judgments, not a single judgment is adverted to in the cryptic paragraph 7 set out hereinabove. Can it be said that this judgment is a declaration of the law under Article 141 of the Constitution, which as a matter of

practice we cannot differ from being a bench of coordinate strength?

42. This question is answered by referring to authoritative works and judgments of this Court. In Precedent in English Law by Cross and Harris (4th edn.), 'ratio decidendi' is described as follows:

> "The ratio decidendi of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him, or a necessary part of his direction to the jury." (at page 72)

43. In Dalbir Singh v. State of Punjab (1979) 3 SCR 1059 at 1073-1074, a dissenting judgment of A.P. Sen, J.

sets out what is the ratio decidendi of a judgment:

> "According to the well-settled theory of precedents every decision contains three basic ingredients:
>
> (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;
>
> (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
>
> (iii) judgment based on the combined effect of
>
> (i) and (ii) above.

For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi. [R.J. Walker & M.G. Walker: The English Legal System.

Butterworths, 1972, 3rd Edn., pp. 123-24] It is not everything said by a judge when giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi.

In the leading case of Qualcast (Wolverhampton) Ltd. v. Haynes [LR 1959 AC 7 43 : (1959) 2 All ER 38] it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an

earlier case appear to be identical to those of the case before the court, the judge is not bound to draw the same inference as drawn in the earlier case." Similarly, this Court in Som Prakash Rekhi v. Union of India (1981) 2 SCR 111 at 139 referred to the "laconic discussion and limited ratio" in Subhajit Tewary v. Union of India (1975) 3 SCR 616, a judgment of a Constitution Bench of this Court, and was not bound by it. Krishna Iyer, J. put it thus:

> "We may first deal with Subhajit Tewary v. Union of India (1975) 3 SCR 616, where the question mooted was as to whether the C.S.I.R. (Council of Scientific and Industrial Research) was 'State' under Art. 12. The C.S.I.R. is a registered society with official and non-official members appointed by Government and subject to some measure of control by Government in the Ministry of Science and Technology. The court held it was not 'State' as defined in Art. 12. It is significant that the court implicitly assented to the proposition that if the society were really an agency of the Government it would be 'State'. But on the facts and features present there the character of agency of Government was negatived. The rulings relied on are, unfortunately, in the province of Art. 311 and it is clear that a body may be 'State' under Part III but not under Part XIV. Ray, C.J., rejected the argument that merely because the Prime Minister was the President or that the other members were appointed and removed by Government did not make the Society a 'State'. With great respect, we agree that in the absence of the other features elaborated in Airport Authority case (1979) 3 SCC 489, the composition of the Governing Body alone may not be decisive. The laconic discussion and the limited ratio in Tewary (supra) hardly help either side here." Also, in Municipal Corpn. of Delhi v. Gurnam Kaur, (1989) 1 SCC 101 at 110, this Court stated:
>
> "11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter." (Emphasis Supplied) Further, in State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639 at 679-680, it was stated:
>
> "65. "Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. The courts have developed this principle in relaxation of the

> rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered in ignorance of a statute or other binding authority. xxx xxx xxx
>
> 67. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong." It is clear, therefore, that where a matter is not argued at all by the respondent, and the judgment is one of reversal, it would be hazardous to state that the law can be declared on an ex parte appraisal of the facts and the law, as demonstrated before the Court by the appellant's counsel alone. That apart, where there is a detailed judgment of the High Court dealing with several authorities, and it is reversed in a cryptic fashion without dealing with any of them, the per incuriam doctrine kicks in, and the judgment loses binding force, because of the manner in which it deals with the proposition of law in question. Also, the ratio decidendi of a judgment is the principle of law adopted having regard to the line of reasoning of the Judge which alone binds in future cases.

Such principle can only be laid down after a discussion of the relevant provisions and the case law on the subject. If only one side is heard and a judgment is reversed, without any line of reasoning, and certain conclusions alone are arrived at, without any reference to any case law, it would be difficult to hold that such a judgment would be binding upon us and that we would have to follow it. In the circumstances, we are of the opinion that the judgment in Yasangi Venkateswara Rao (supra) cannot deter us in our task of laying down the law on the subject.

44. In view of what has been held by us, it is not necessary for us to go into the arguments relating to Article 14, more so in view of the fact that counsel appearing for the Union of India and the Reserve Bank of India are correct in stating that there is no pleading worth the name which would rebut, on facts, the presumption of constitutionality that attaches to Section 21A of the Banking Regulation Act. References to RBI circulars and the counter affidavits filed in the present writ petition again do not take us much further, as what has to be decided is a pure question of legislative competence.

Conclusion

45. We declare Section 21A of the Banking Regulation Act to be valid as it is part of an enactment which, in pith and substance, is relatable to Entry 45, List I of the Seventh Schedule to the Constitution. However, insofar as Section 21A incidentally encroaches upon the field of relief of agricultural indebtedness, set out in Entry 30, List II, it will not operate only in States where there is a State Debt Relief Act which deals with the subject matter of relief of agricultural indebtedness, where the State Debt Relief Act covers debts due to "banks", as defined in those Acts. In States where the State Debt Relief Act does not apply to banks at all, or applies only to certain specified banks, Section 21A will, in the former situation, apply in such States, and, in the latter situation, apply only in respect of loans made to agriculturists where such loans are given by banks other than

the banks specified or covered by the concerned State Debt Relief Act, as the case may be.

.....J. (R.F. Nariman) .....J. (Navin Sinha) New Delhi;

February 16, 2018.