DRT AND ENFORCEMENT OF DEBT RECOVERY PROCEDURES IN INDIA : A HALF FULFILLED PROMISE OF THE RDDBFI,ACT 1993 ?

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

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CERTIFICATE

This is to certify that the dissertation titled, "DRT AND ENFORCEMENT OF DEBT RECOVERY PROCEDURES IN INDIA : A HALF FULFILLED PROMISE OF THE RDDBFI,ACT 1993?" is the work done by Akshay Pratap under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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TABLE OF CONTENT:

TABLE OF CASES

	Joint Commissioner of Tax		
17	Ram Industries v. Punjab National Bank	(2000) 1 BC 89 (DRT-Mum)	25
18	Digvision Electronics Ltd. v Indian Bank	(2004) 4 SCC 311	27
19	Madhukant pranlal shah v. Bank of india	(2007) 138 Comp. CAs.715 (Guj)	27
20	Allahabad Bank v. Canara Bank	(2000) 101 Comp. Cas.64 (SC)	32
21	Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corporation	(2009) 8 SCC 646	34
22	M/s Panjwani packaging Ltd. v. Allahabad Bank	writ petition (civil) 1803/2015	35
23	State Bank of India v. Madhumita Construction P. Ltd.	(2003) 2 BC 610 (cal) :AIR 2003 Cal 7.	36
24	Canara Bank v. Associated Founders Pvt. Ltd.	(2003) 3 BC 6 (DRAT - Chen).	37
25	Govind M. Pujara v. Bank of India	(2009) 1 BC 548 (Raj) (DB)	37
26	Punjab National Bank v. Seraikella Glass Work Ltd.	(2004) 4 BC 235 (DRAT-Ran).	38
27	Baby Sebastian v. Vijaya Bank	(1997)2 BC 540 (Ker) :1997 ISJ (Banking)107.	38
28	Madan stores P. Ltd., v. Central Bank of India	(2003) 3 BC 134 (DRAT-Del).	38
29	Ramesh Chand v. Global Trust Bank	(2003) 2 BC 6(DRAT-Chen)	40
30	National Bank v. presiding officer , DRT	(2003) BC 695 (Cal)	41
31	Lily Chemicals Pvt. Ltd. V. Chairperson, Debt Recovery Tribunal	(2002) 110 Comp.Cas.49	42
32	Nihon Nirman Ltd. v. Debt Recovery Tribunal	(2004) 54 SCL 74 (CLP) (Raj)	43
33	Daisy Puthran v. Recovery Offiicer	(2004) 54 SCL 174 (SCL) (Ker)	43
34	Sushil Kumar Jaiswal v. Bank of India	(2004) 54 SCL 174 (SCL) (Ker)	43
35	State Bank of India v. Shyamji Sales	(2003) 115 Comp. Cas 567 (MP) (DB)	44
36	Agarwal Tubes Pvt. Ltd. v. Debt Recovery Tribunal	(2002) 110 Comp. Cas. 633 (Raj)	44
37	Ashoka Alloy Steel Ltd. v. Central	(2004) 122 Comp Cas	45

	Bank of India	777(HP)(DB)	
38	Kowa Spinning Ltd. v. Debt Recovery Tribunal	(2005) 123 Comp. Cas 677	49
39	Maharaji Educational Trust v. Punjab and Sind Bank	(2006)Bankers'J51(53)(All)	51
40	Jagannath Dudadhar v. Commissioner of Sales Tax	(2004) 136 STC 235	51
41	Asif Alim Sait v. Syndicate Bank	(2005) 124 Comp Cas	52
42	K. Janardhan Pillai v. Indian Overseas Bank	(2003) 115 Comp. Cas 64 (Ker) (DB)	53
43	Anil Kumar Gupta v. Bank of Baroda	(2005) 123 Comp.Cas.773	54
	KSL		
	D.A Dawood v.State of Bikaner	(2001) 2 BC 72(DRAT-Del)	
44	Life Insurance Company v. Vijay Bahadur Case	(2002) 2 BC 16 (DRAT-Chen)	58
	Indarjeet Arya v. ICICI Bank	(2014) 2 SCC 229	
45	Bank of India v. Manickam C Sellakumarasamy	(2007) 137 Comp. Cas. 330 (Mad)	61
46	Gauri Shankar Prasad v. Chief Manager ,State Bank of India.	AIR 2009 Jhar. 47	61
47	Bharat Beedi Works Ltd. v. Kunhambu K	(2003) 115 Comp. Cas. 676 (Kant) (DB)	67
48	M.G. Dying Works v. Central Bank of India	(2004) 54 SCL 127 (CLP)(Raj)	68
49	Jekay Rolling Mill (P.) Ltd. v. Debts Recovery Tribunal	(2004) 54 SCL 133 (CLP)(Cal)	68
50	United Commercial Bank v. Dev Raj Case	(2004) 122 Comp. Cas. 568 (HP)	
51	Punjab and Sind Bank v. Rama Minerals and Chemicals	(2003) 115 Comp. Cas. 883	69
52	Punjab National Bank v. Chajju Ram	AIR 2000 SC 2671	71
53	Punjab National Bank v. O.C Krishnan	(2001) 6 SCC 569	74
54	Allahabad Bank v.Bharat Re-Rolling Mills Pvt. Ltd.	(2002) 2 BC 16 (DRAT-Chen)	77
55	E. Satheesh Kumar v. Vijaya Bank	(2003) 116 Comp. Cas. 549 (Mad)	79
56	Kumar's Cotex Ltd. v. Debts Recovery Tribunal	(2002) 111 Comp. Cas. 49 (AP) (DB)	81

57	Omega AG Seeds (India) Ltd. v. Bank of Baroda	(2004) 121 Comp. Cas.790 (Bom) (DB)	82
58	Bank of Rajasthan Ltd. v. Rajasthan Breweries Ltd.	(2001) 2 BC 182 (Raj-DB)	83
60	Mrs. Kiran Batra v. Presiding Officer	(2003) 116 Comp. Cas. 668 (Mad)	85
61	Sebastian Chokkatu v. Industrial Development Bank of India,	(2006) 132 Comp. Cas. 539 (Ker) (DB)	86
62	Bharat Beedi Works Ltd. v. Kunhambu K.,	(2003) 115 Comp. Cas. 676 (Kant) (DB)	87
63	Thansingh Nathmal Vs. The Superintendent of Taxes Dhubri and Others	(2004) 121 Comp. Cas.790 (Bom) (DB)	90

ABBREVIATIONS

1. DRT – Debt Recovery Tribunal
2. DRAT – Debt Recovery Appellate Tribunal
3. RDDBFI ACT, 1993 - Recovery of Debts Due to Banks and Financial Institutions Act, 1993
4. SARFAESI ACT,2002 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
5. C.P.C,1908 – Civil Procedure Code,1908
6. FI – Financial Institution
7. SC – Supreme Court
8. SICA,1985 – Sick Industrial Companies Act,1985
9. OA – Original Application
10. PO – Presiding Officer
11. NTC—National Tribunal Commission

CHAPTER 1

INTRODUCTION

DRT's are the tribunals that facilitates the recovery of loaned money involving banks and financial institution, from their customers, under the legislative framework of RDDBFI Act, 1993, which shall be the prime focus of this research.

1.1 Statement of the Problem

The establishment of the Debt Recovery Tribunal was done to achieve expeditious recovery of debt involving the banks and other financial institutions with their customers. They were set up, by an act of the Parliament called as Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and provisions of appeal against the orders of DRT are provided before the Debt Recovery Appellate Tribunal.

During the initial phases the DRT's were able to handle large number of cases with low delay, however with the rising number of Non-Performing Assets(NPA) coupled with infrastructural and administrative loopholes it became difficult for them to attain the objectives for which the were established

Through this study the researcher endeavors to observe the existing legislative and policy framework which are found to be inadequate in addressing the obstacles being faced by the DRT'S and DART'S and will further suggest the measures to be taken to strengthen the institution of debt recovery in India.

1.2 Survey of the existing literature

1. ML Tannan, Tannan's – Banking laws and practices in India, 26th Edition,2016

This book presents some of the key concepts of banking law and structure of banking system in India, the role of the R.B.I in India ,the relationship between the banks and customers. It also explains in details the banking regulation act, Negotiable Instrument Act and Debt Recovery laws.

2. Vinod Kothari, Securitization and reconstruction of Financial Assets and Enforcement of Security Interest, Wadhawa and Co. New Delhi, 2007
   This book provides important insights into the subjects such as SARFAESI Act, coverage on resolution of NPA ,Coverage on resolution of Corp. debt and Coverage on securitization as a financial instrument.

3. S.N. Gupta (2010) 5th Edition in 3 Volumes. The Banking Law in Theory & Practice: Universal Law Publishing Co.
   This book covers historical data on banking and covers the current situations and positions in a lucid way. In addition to dealing with variety of situations which may arise between a banker and customer it deals exhaustively with all aspects of banking laws. It covers in detail the Dishonor of Cheques and Criminal Liability under the Negotiable Instruments Act, Bank Guarantees and the Law of Limitation, the Banking Law etc. as well as various statutes and important rules and regulations concerning Banking.

4. U.N.Mitra (2009) 12th Edition in 2 Volumes. The Law of Limitation And Prescription: LexisNexis Butterworths Wadhwa Nagpur.
   Key Highlights of this book includes the following :Leading treatise on the subject for over a century • Comprehensive Section/Article wise commentary on the Law of Limitation & Prescription • Critically analyses legal provisions, with clarity and coherence.

5. Suseelan &.Anilkumar (2002) 2nd Edition. The Code of Civil Procedure, 1908: Swamy Law House.

This book contains detailed provision on C.P.C,which is well acclaimed and written in lucid style explaining the theoretical as well as practicle aspect of civil procedure.

6. V. Desai. “Indian Banking –Nature and Problems”, Himalaya publication,1988.

1.3 Identification of the issues

a) Despite various efforts, why the Debt Recovery Tribunal are becoming inefficacious in carrying out their statutory obligations?
b) What possible steps could be taken to make the operation of the DRT efficient and expeditious in terms of volumes of cases they are required to deal with?
c) Weather the interference by the Civil Courts during the recovery proceedings of DRT in certain matters required?
d) To what degree it is appropriate to depend on Debt Recovery Tribunal for the recovery of Debt due to Banks and Financial Institutions specially when it comes to the dealing with complex question of law?

These are some of the issues which the present study aims to address by encompassing the required information, and the appropriate answers to them are sought at the end of this research.

1.4 Scope of the research

When borrowers cannot pay defined interest or principal on time, creditors can initiate steps for recovery of such debt. Bankruptcy laws decide the procedure by which recovery continues. This research portrays and talks about a few highlights of the recovery procedure in India, concentrating on obligation recovery courts (DRTs) and obligation recovery re-appraising councils (DRATs). We touch upon the related SARFAESI Act and the 1985 SICA, Act.

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1.5 Research methodology

The present learning is based upon the doctrinal methodology of research, where the facts and figures have been used with the sole purpose of supplementing the efforts and design of the researcher and to supply the present work with utmost authenticity that is need. The present work is based on :

(a) Primary Sources: the same shall include an exhaustive analysis of relevant statutory provisions and Judgments prevailing in India,forming the subject matter of this study.

(b)Secondary Source: library research involving the study of various books, journals, articles, interviews, browsing official websites etc.

1.6 Hypothesis

The idea of the establishment of the Drt and the Drat was conceived to lower the burden of judiciary, by ensuring expeditious disposal of recovery cases filed by the banks and financial institution. This was done to ensure that the hard earned money of the depositors is not allowed to be used by the unscrupulous borrowers to enrich themselves at the cost of the others. Despite standing up to the expectations of those who created these bodies, there overall performance cannot be appreciated in the light massive piling up of cases due to large pendency (adjournments) and misuse of loopholes in the procedures which facilitates regular interference by the other institution of justice, thereby impeding their smooth and swift functioning.

1.7 Probable Outcome

The Research work focuses on the following outcomes –

I. An in-depth study of a Debt Recovery Tribunal to understand it's working.
II. To find alternative remedies available for the recovery of debt by banks and Financial Institutions and its comparison with the Debt Recovery Tribunal.
III. To examine the causes for delay in the proceedings of the DRT, destroying its purpose of its establishment.

IV. To derive ways and means for the faster and effective working of DRT and DRAT

CHAPTER – 2

The Origin

2.1 The Origins of Debt Recovery Tribunal

In India, for the purpose of recovery the banks and financial institutions were required to initiate civil suits before the civil courts. The proceeding were initiated as per the provisions laid down in the Civil Procedure Code (C.P.C), 1908 . The procedures under the C.P.C were time taking and cumbersome . In 1981, a panel under the Chairmanship of Mr. T. Tiwari was constituted to propose the desired changes in the recovery laws. The committee observed that the framework of debt recovery that provided the proceedings to be instituted before civil court to be insufficient in dealing with complex cases. The committee recommended different modes of recovery to deal with this situation. One of the measure, involved setting up of a quasi-judicial bodies to deal solely with the debt recovery process. These bodies could undertake an expedient "summary proceedings" for disposing of the recovery cases. However, the real development of such bodies could only began nearly around 10 years after the advent of the LPG(Liberalization Privatization & Globalization) reforms .

In the year 1991, the Committee on the Financial System headed by Shri M.Narasimham (Narasimham Committee I) supported the recommendations of the Tiwari Committee and proposed the establishment of Special Tribunals. While deliberating upon the idea, the advisory group observed the elephantine workload of the court. As of 30th September 1990, there were more than 1.5 million cases filed by public sector banks and 304 cases instituted by the financial institutions, were pending in different courts . The recovery amount stood in excess of 5,622 crore in case of public sector banks and 391 crores due to the other financial institutions. The suggestions of the Narasimham committee served as a motivation for the introduction of the RDDBFI Act (RDDBFI), 1993. The Act established two types of organizations, Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs), and bestowed them with extraordinary powers

to settle recovery matters by way of arbitration. In this direction, the first foundation of DRTs as an institution to determine liquidation matter happened in 1993. The main DRT was established in Calcutta (now Kolkata) on 27th April 1994.

Unfortunately it took nearly half a decade to ascertain the constitutional validity of the DRTs. The constitutional validity of the RDDBFI Act was tested under the steady gaze of the Delhi High Court by the Delhi Bar Association. On March 10, 1995, the Delhi High Court ruled that the RDDBFI Act as unconstitutional because it undermined the doctrine of "independence of the judiciary from the executive". The other anomalies recorded by the Court were, For instance, the complete absence of an enabling provisions for the counter-claims to be filed by the defendants made the Act biased towards the creditors making the mode of debt recovery as a method of taxation. However, The Union government moved the Supreme Court against the judgment. On March 18, 1996, the Supreme Court issued an interim order directing that, notwithstanding any stay order passed in any writ petition, DRTs shall resume their functions. It also instructed the central government to amend the law in order to address certain anomalies, and the same was complied by the government in 2000. The Subsequent amendment introduced in the RDDBFI Act in 2000,enabled the defendant to file a counter claim, and it also ensured the independence of DRTs from the executive organ of the State. In the final ruling delivered on March 14, 2002, the Supreme Court declared that the RDDBFI Act with the amendments was constitutional. The above judgment resulted in all the pending cases about the constitutional validity of the act being dismissed, and all residual questions about the legitimacy of the DRTs came to an end.

2.2 Establishment of Tribunal (DRT)[1]

The Central Government must establish at least one Tribunal to be known as the Debt Recovery Tribunal (DRT) to exercise the jurisdiction, powers and authority conferred upon it by or under the Act, via Notification issued to that effect. The Notification needs

[1] Section 3 of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

to indicate the territorial jurisdiction within which such tribunal is empoweres to entertain and decide the applications filed before it. Court constituted under Debt recovery Act alone were authorized to choose matters of settling, abound cry and matters associated or coincidental thereto including counter-case or set-off In harmony with the DRT Act.

2.3 Composition of Debt Recovery Tribunal (DRT)[2]

The Tribunal shall consist of one individual only to be known as the Presiding Officer. The above arrangement must be made by the Central Government by a Notification. The Government may appoint the Presiding Officer of one Tribunal to discharge the responsibility of the Presiding Officer of another Tribunal.

The Debts Recovery Tribunal (DRT) also has a Registrar, Assistant Registrars, two Recovery Officers and other supporting staff. The Enforcement Act 2016 has made changes in the primary DRT Act providing tha the Central Government may appoint the Presiding Officers or other legal individuals from some other Tribunal constituted under some other law, to act as the Presiding Officer of DRT.

Qualification of Presiding Officer[3]

Any person who is being appointed as the presiding officer of the DRT should be a person who is or has been or is qualified to be appointed as a district judge and not below that rank .

[2] Section 4 of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

[3] Section 5 of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

Term of Office[4]

From the date of the appointment, the Presiding Officer of the Debt Recovery Tribunal shall hold the office for a term of five years or until he attains the age of sixty two years , whichever comes earlier.

Working Staff of Tribunal

The Central Government is required to provide to the tribunal, at least one Recovery Officers and such different officers and workers as the Government may think fit. They need to work under the general superintendence of the Presiding Officer. Their salary and allowances is to be fixed and paid by the Central Government.

Debt Recovery Tribunals (DRT and DRAT) substantial-

The Constitution of India has conferred the power to establish an adjudicatory body to deal with cases related to banks and other financial institution upon the Union Government, as provided under entry 45 to the Union List of the 7th Schedule..

2.4 JURISDICTION OF TRIBUNALS

Scope of DRTs and DRATs

Under the law , an application for recovery of debt can be made before the DRTs for all the amount that is more than INR 10,lakhs . For an amount less than this, the banks and other related institutions, they can follow the ordinary course of action, i.e. the Civil Courts. The Act further permits the Central Government to determine such other cases dealing with the amount, not less than INR 1 lakh , that can be disposed of by the DRTs.

[4] Section 6 of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

The present arrangement works in harmony with the other liquidation enactments, for example, SARFAESI act that determines different value of money that can likewise be taken up by DRT. As far as process under Section 22 (1) of the Act is concerned, it provides that the DRT and DRAT are to be guided by the principle of characteristic equity. They have sufficient powers to regulate their own proceedings and are not bound by the statutory provisions of the C.P.C. that Operated earlier. A law degree isn't important to contest such cases.

The scope of jurisdiction of the DRT and DRAT are so thoughtful curated that they don't directly jump over to mediate on the primary issues on which DRTs must run the show. Section 17 of the RDDBFI Act vests in the DRT the power to entertain applications from banks and other financial institutions for the purpose of recovery. section 2(g) of the RDDBFI Act characterizes debt as any liability (comprehensive of premium) which is claimed as due from any individual by a bank or any other financial organization or by a consortium of the above two during their course of business activity that they undertake under any law ,weather it is in cash or any other form, regardless of being secured or unsecured, or assigned, or whether it is payable under an order or decree of a competent court or by means of arbitration award or generally under a mortgage and subsisting on, and legitimately recoverable on, the date of the application.. The DRAT has the ability to address application made against any order passed by the DRT. Section 18 of the Act bars every single Court other than the authority to exercise jurisdiction in connection to the issues specified under section 17 of the act, except the Supreme Court and High Court exercising power under articles 226 and 227 of the Indian Constitution. Basically orders or judgment of DRAT can be challenged only before the High Court and the Supreme Court**.**

In **Indian Bank v. ABS Marine Products**[5] , Indian Bank sought the transfer of a suit filed by ABS Marine in the Calcutta High Court to the DRT. The Supreme Court held that without the consent of a borrower, the independent suit filed by him can't be transferred to DRT, as his entitlement to approach civil court can't be taken away. This

[5] AIR 2020 SCC 2011

decision gave a blow to the provisions the DRT act could be effortlessly bypassed by a borrower presenting himself as an independent suitor in a civil court seeking precisely the inverse remedy of what the bank was requesting to the DRT.

In **State Bank of India v. Ranjan Chemicals Ltd**[6] , the Supreme Court held that its power to transfer a suit was independent of the assent of the parties. It is hard to accommodate this decision with ABS Marine, particularly when the Court was requested to transfer an independent suit on the ground that it would avoid duplication of proof, guide, cost's and so on. The main concern that this decision raises is that the DRT might not be well equipped to handle cases which include complex inquiries of law or truth, and that the Bank could prevent a borrower from approaching a civil court to determine these inquiries by simply filing a case in the DRT. Though The DRT has detailed procedures but still believed to be not well prepared to consider claims like distortion or misrepresentation, which require examination of large number of witnesses. Different decisions of the Supreme Court does not in general make a difference either, as one appears to help Ranjan Chemicals while another appears to support the case of ABS Marine. Hence, the law on these issues is quite ambiguous . This debate entails huge ramifications over the debt recovery procedures under the Indian law, and the rights of the borrowers to have important and substantial questions to be settled by the common courts. Equally important is to remember the true purpose of setting up the DRT in India.

In **M.P Abdul Khader v. Catholic Syrian Bank**[7] , the DRT branch, Kerala held that where the amount to be recovered in a case exceeds 10 lakh rupees, the jurisdiction of' the civil courts are restricted. The RDDBFI Act, 1993 clearly provides that the Debts Recovery Tribunal (DRT) has the sole jurisdiction to deal with dues over Rs. 10 lakhs, barring the Civil Court's jurisdiction on the same. The ex-parte pronouncement of the civil court was set aside. At the time when the case was filed before the Civil Court the amount due was less than Rs.10 lakhs, but by the time the decree was passed to the creditor the due amount raised above Rs.10 lakhs taking away the jurisdiction of the Civil

[6] Civil Appeal No. 4443 of 2006
[7] (2007) 137 Comp. Cas. 970 (Ker)

Court over the case .However by virtue pendente-lite interest, decree passed by the Civil Court was found to be valid.

Subsequently, in **Sneha Industries v. State Bank of Hyderabad**[8] , the court held that the RDDBFI or the DRT Act, 1993 provides under Section 1, that if the money due to any bank is Rs.10 lakhs or more then DRT is the appropriate forum, and in the event the debt amount is less thanRs.10 lakhs then Civil Court is the Forum. Further, the amount for determining the jurisdiction shall be based upon the value which was due on the date of filing the suit in the Civil Court or an application before the DRT. Given the fact that the sum was less than Rs.10 lakhs as on the date of filing of the suit before the Civil Court, however with the addition of interest over the period of time, it got raised to a figure which is more than Rs.10 lakhs. thus under the above circumstances the Civil Court does not lose jurisdiction.

2.5 Interventions by Lower Courts

While the DRT were established with the design to decongest the lower courts of the recovery cases, but in practice, the lower courts continues to play a significant role in the debt recovery process because the judicial powers conferred by the RDDBFI Act on the DRT and DRAT are quite narrow. In one of the judgment of the Supreme Court In **Standard Chartered Bank v. Dharmindar Bhai and others**[9], the Court ruled that the DRT and DRAT can adjudicate on matters pertaining to their domain provided in section 17 of this Act. For instance, the DRTs and DRATs cannot exercise jurisdiction over matters related to succession, rights of property, monitoring and implementation of KYC norms or issuance of receipts. Such issues can eventually arise during the debt recovery process, e.g., to infer security interest but the disputes in hand may require a rulings from the civil courts having broader jurisdiction than the DRTs and DRATs. Thus, the civil courts are approached for resolving these disputes, even where the proceedings have been preferred before the DRT or DRAT, resulting in delay of the proceedings before them ,waiting for the decisions of the Civil Courts to provide appropriate guidance.

[8] (1999) 2 BC 695 (AP-DB)
[9] 2014 ALL SCR 61

2.6 POWERS OF THE TRIBUNALS

Debt Recovery Tribunals are not courts –

The courts have the power under Section 22 of Act to conduct their own affairs and lay down the procedures; it also includes the power to decide the place where the Tribunal wants to conduct its meetings. The Tribunal is not guided by the procedures laid down in the Civil Procedure Code, 1908. But the Tribunal enjoys all those powers of Civil Court which are necessary for the proper adjudication of the case and passing of the decree. The Act requires the Tribunal to pass the final order in the case within half year from the date of initiating the proceedings. If the oral evidences are allowed to be adduced in all the cases, the very purpose of the Act would get frustrated. For every such reasons the trial cannot be said to be vitiated for want of testimony. The strategy embraced by the DRT, Ahmedabad is very appropriate and reliable. The Tribunal (DRT) or the Appellate Tribunal (DRAT) is considered to be a Civil Court for all reasons for the Civil Procedure, Criminal and Procedure Codes.

Memorandum of appeal filed before DRT

A memorandum of appeal that is filed under Section 22(2) of the Debts Recovery Act is not allowed to be treated as an appeal under Section 17 of the Securitization Act, 2002.

Powers to pass all orders including garnishee order -

The Debts Recovery Tribunal was constituted under the RDDBFI Act to replace civil courts with respect to the debt recovery matters, free from the involvement of the Civil Court. Thus, it can pass any sort of orders, last (final) or in between the proceedings (interim order), to achieve the goals of the Act without any procedural repercussions, and at the same time they are also guided by the principles of natural justice. The Tribunal has can also pass a garnishee order instructing the garnishee to deposit certain sum of

money with the applicant bank, during the pendency of the recovery of debt under the Act, however it is not specifically provided under Section 19(12) of the RDB Act[10].

DRT and DRAT to follow natural justice

As it is well settled under Section 22 of the DRT Act, l993, the Tribunal (DRT) and the Appellate Tribunal (DRAT) are not bound by the rules of the Code Civil Procedure, 1908 , and are to guide themselves by the standards of natural justice. It is now apparent that where ever the tribunal is required to pass an order having Civil consequences, in such circumstances principle of natural justice must be followed. The idea behind it is " to avert the miscarriage of justice " and secure "reasonable role in real life". Where an order entails adverse or penal consequences, the order must be passed following the standards of natural justice."

Regardless of whether the arrangements of the Civil Procedure Code are not material to the working of DRT, it needs to take after standards of natural justice. The Tribunal needs to take after the method endorsed by the Act and Rules and Regulations encircled under it. There is no power in the Tribunal to stop the cross-examination of a witness on the ground that he had been there in the witness box for quite a while. The time duration for round of questioning can't be defined. Just the mishandling of the right ought to be avoided .However, the Law and Rules are proposed to encourage and not impede the Court or Tribunal from doing considerable justice

Not just Tribunals and Appellant Tribunals, even the High Courts must deal with the defaulters, who are endeavoring to escape from the liability or postpone the payment of debt due to the banks and financial institution seeking help from the loopholes in the law.

Power to impound passport

The Tribunal (DRT) is vested with sufficient amount of power to make such orders as may be important to give effect to its judgment and to secure the ends of justice, and

[10] Singareni Colleries Co.Ltd. v. State Bank of Hyderabad,(1998) 2 BC 241 (AP).

where the need arose an order seizing the passport of the debtor was also found to be legitimate.

In a decisions contrary to the above, it has been held that the DRT has no power to seize the passport of a debtor. Consequently, the impugned order of the DRT directing the applicant party to deposit his passport with Recovery Officer was set aside[11].

Power to restrain or injunction against alienation of property

Where the respondents were at a point under the bearing to keep up the business as usual in properties in a calendar year and they had enough unveiled particulars of properties and attempted not to distance them, the Tribunal declined to issue any further order. lt rather allowed them to bear on their business in planned properties subject to a few conditions. It was ruled that the court is the gatekeeper of the two gatherings and will undoubtedly maintain the poise of the Constitution; the bank couldn't assert pre-trial judgment. Individuals are qualified for bear on their business as indicated by their desires. Where the account holder by an order has been estopped from distancing his property, one of the option is that the indebted person can exchange the property just with the endorsement of the court[12].

Review of order in suit for recovery of money

The Tribunal has an inherent power under Section l9(25) of the DRT Act read with Rule 18 to make correction of errors with a view to deliver complete justice. No review application can be made after expiry of 60 days from the date of order[13].

[11] Vinod Kothari, Tannan's -Banking Laws and Practices in India,1420,(Lexis Nexis,26 edition,2017)
[12] ibid
[13] Rule 5A (2) of the DRT Rules

Fee for review [Rule 7 (2)]

50% of the fee is to be paid for an original application as prescribed in the Table appended to Rule 7(2) of DRT Rules[14].

Limited scope of review, not to be construed as appeal

The scope of review is limited and it cannot be construed as an appeal. Review should not be done to reopen the case for rehearing and afresh decision[15].

No Review petition before High Court when appeal lies

A revision petition preferred against an order of DRT was filed under the steady gaze of the High Court. There was a refusal to entertain it due to the availibility of an alternate remedy. A review petition was subsequently rejected by the Appellate Tribunal. It was held that the best possible course was to prefer an appeal against the order of the Tribunal.

Delay in filing review petition

The litigant knew that all documents were there before the Tribunal and still, still he didn't find a way to acquire confirmed duplicates and filed them in time. There was a delay of three months. The request of was tiled belatedly. No appropriate reasons were given. There was nothing wrong in denying the approbation of deferral all together.

Withdrawal of certificate and power of review

The powers of Presiding Officers are restricted in this regard. This power of review does not allows the tribunal to usurp within its ambit the power of reviving the cases. Once the Tribunal had given contemplated verdict on merits, the Tribunal can't hear the case again by alloeing the parties to reargue the issue as fresh. Testament can't be pulled back by the Tribunal under Section 26(3) of the Act.

[14] United Bank of India v. Sh. Balai Chandra Das,(2004) 3 BC 10 (DRAT-Kolkata)

Appeal against dismissal of review

The appeal against final order or dismissal of review petition is maintainable. The delay deserved to be condoned. The bank was justified in exhausting the remedy of review.

Review of appellate order

The Tribunal as well as the Appellate Tribunal have the power to entertain review application like a civil court. As a necessary corollary, the provisions of Order 47, Rule l of the C.P.C, apply to the cases decided by the Tribunal and Appellate Tribunal. Therefore, the DRAT was not justified in rejecting the application seeking review of the appellate order[16].

Appeal in case of ex parte decree

The borrower's counsel failed to appear in a hearing before the tribunal and therefore, an ex parte final order was passed. An appeal was preferred against this order, the court held that it was not a case where it could be presumed that the borrower was not acting in a bonafide manner and was deliberately avoiding appearence before the Tribunal. The party should not suffer from inaction or negligence of his counsel. The ex parte order was set aside[17].

Where the borrower said that his counsel had assured him that he need not be present at the time of hearing unless he was specifically instructed otherwise, but this was found to be not true and his statement that he regularly attended all hearings was false as the record depicted the contrary, the DRAT refused to set aside the ex-parte final order.

[16] Section 22(2)(c) of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

[17] Ravinder singh v. Syndicate Bank,(2005) 124 Comp. Cas. 752 (DRAT)

An application for setting an ex-parte decree aside was found to be time-barred. Notice was not given to the opposite party in good time. There was no proof of it. Service through newspaper publication did not satisfy the requirement of Section 19(4).

Setting aside an ex parte decree[18]

Where the amount involved is 10 lakh rupees, the Debt Recovery Tribunal (DRT) is the appropriate forum to approach for setting aside an ex parte decree. For this purpose the amount of decree is the relevant factor to determine jurisdiction and not the amount originally claimed. Where the amount is less than that, the Tribunal (DRT) has no jurisdiction. A claim of 10 lakh rupees must be hastened before the Tribunal (DRT).

The Tribunal (DRT) and the Appellate Tribunal (DRAT) have, in furtherance of discharging their functions under the RDDBFI Act, enjoys the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 . Section 22(2) (g) of the RDB Act, has to be read with C.P.C, Order IX, Rule 13, which contains enabling law for setting aside an ex parte decree passed against a defendant. For the same purpose it is immaterial for the court while dealing with these cases as to weather the defendant was awared about the pendency of the case or he had knowledge of the d ate of hearing and yet he failed to appear before the court . What matters is not whether the defendant was actually served with the summons in accordance with the procedure laid down and as has been prescribed in Order V of the Code. but whether

(i) he had the notice of the date of hearing of the suit; and

(ii) whether he was afforded substantial amount of time to appear and counter the claim of the plaintiff.

Once these two conditions have been satisfied, an ex parte decree cannot be set aside even if it is established that there was some irregularity in the service of summons. When

[18] Sections 21 and 22 of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

the company did not repay the loan borrowed ,the bank filed a suit for the recovery of an amount of Rs. 1,07,17,177, against the company and its directors. Summons were served upon the defendant who appeared before the court. they were directed by to appear before the Tribunal (DRT) as the matter was transferred there under the RDDBFI Act but they failed to do so. The Supreme Court held that the order passed by the Tribunal (DRT) was not inspired by any ground taken by the appellant. The Appellate Tribunal (DRAT) correctly observed that even if it was presumed to be true that the appellants did not received any notice from the Tribunal (DRT), even then it was incumbent upon the defendant to make necessary inquiry about the case when it had been transferred to the Tribunal. Therefore in the light of the existing facts and circumstances of the case in their was eventually no miscarriage of justice, to the contrary, the appellants had not come to the court with a clean hands[19].

Recall of ex parte order despite bank's negligence

There was no justification for the bank being absent from the proceedings for a certain period despite the fact that the bank had adequate notice, and the officers were preparing to attending the proceedings but no one came forward. The bank came out of its slumber only after receiving the ex-parte order. Despite the negligence on part of the bank and in the interest of justice another opportunity was afforded to the bank to contest the case on merits. The court held that the contributory negligence on the part of bank officers, the bank is also equally liable[20].

Ex parte decree passed without notice

The applicant acted promptly after he discovered about an ex-parte decree against him. As he was not awared of the original application therefore he could not contest the same. The principle of natural justice required that no one should be condemned unheard. The decree passed by the Tribunal was set aside[21].

[19] Vinod Kothari, Tannan's-Banking Law and Practices in India,1422 (Lexis Nexis,Gurgaon,26Edn.)
[20] Ibid
[21] Applied Electra Magnetics P. Ltd v. Syndicate Bank,(2003)2 BC 89 (DRAT-Del)

An ex parte decree was held to be not justified where no notice was given to the debtor and stay against the order of the Tribunal was obtained, and it was not known whether the bank had sufficient evidence for enhancement of interest.

Setting aside of ex parte order

An ex parte final order was set aside on an application made by the aggrieved party requesting for an opportunity of having the case decided on merits. But at the same time the bank was made to bare unnecessary expenses and inconvenience. Hence, the party was directed to pay the costs of Rs. 30,000. An ex parte judgment was set aside because the interest awarded was high and moreover the party's counsel had failed to inform him of the date of hearing. The party was directed to pay Rs. 2,00,000 in lieu of their debts to the decree holder bank and to file their written statement within 30 days from the date of receipt. The failure to abide by these conditions would result in the dismissal of the application.

An ex parte order was allowed to be set aside where the other party was not prejudiced. An opportunity was given to submit evidence by filing an affidavit.

Where the party seeking relief to set aside an ex parte order, failed to disclose substantial grounds for non-appearance on the crucial date, his request was declined.

Setting aside ex of an ex parte order was allowed where the defendants was able to prove that there was no service of notice because the address was not correct and further contended that they had not issued several cheques. An opportunity was given to them to have the case decided on merits.

.**DRT power to set aside ex parte preliminary decree**

DRT has the power to set aside an ex parte preliminary decree passed by a civil court in a case prior to it being transfered to the DRT by virtue of the provisions enunciated in Section 31 of the Act.

Ailment of petitioner's wife[22]

Where the petitioner was not able to attend the hearing on regular basis and was able to do so only occasionally due to the ailment suffered by his wife, the ex parte decree which was passed was set aside.

No sufficient cause for setting aside ex parte order

No sufficient cause was shown by the borrower which prevented him from appearing before the Tribunal on the dates fixed on various occasion. The rights which accrued in favour of the bank could not be ignored just because of such negligence on the part of the borrower. If such request was to be allowed the very purpose of this special legislation which resulted in the establishment of the Tribunal would be defeated. If the application for stay of recovery proceeding was allowed, the banks are bound to suffer irreparable loss. Where no proof of non-service of summons was there nor any other sufficient cause was shown, the application for setting aside ex parte decree was rejected. The debtor did not deposited the amount he was directed to pay and, therefore, the Application was not maintainable[23].

Sufficient cause differs from case to case

Since the phrase "sufficient cause" is an elastic expression and capable of multiple interpretation for which no hard and fast guidelines can be laid down and it is for the courts to decide each and every case based on the facts ,whether the defendant who has suffered due to the ex parte decree has been able to satisfactorily demonstrate sufficient cause for non-appearance and in examining this aspect cumulative effect of all the relevant factors are to be seen.

Delay condoned when there was no negligence

Where the delay was condoned because there was no negligence the DRT was directed to proceed with the matter in accordance with principles of natural justice. The borrower

[22] Order IX, Rule 12 of the Code Procedure of Code ,1908

[23] Sri Raja Rajeshwari Textiles v. State Bank of Travancore

was given an opportunity to defend his case by advancing arguments. They were directed to deposit Rs. 20,00,000 towards the amount due and Rs. 3,000 as costs[24].

Dilatory tactics in forum shopping, ex parte decree confirmed

In a case the appellants did not acted bonafide while prosecuting their cause, and inaction on their part was clearly evident, and it was only on account of their negligence and laches the ex-parte decree was passed by the Debts Recovery Tribunal (DRT). Appellants were resorting to dilatory tactics and forum shopping so as to prevent the DRT from disposing of the DA within 180 days as required under Section 19(24) of the RDB Act, 1993. Impugned order did not suffer from any irregularity or illegality and was confirmed, the appeal was dismissed.

Deposit of amount for setting aside ex parte order

The principal part of the suit amount was deposited and only a small portion remaining. The order was passed that if the deposit is not made within the given time, the appeal for setting aside the ex parte decree would be dismissed[25]. The order for deposit of Rs. 50 lakh was reduced to Rs. 12 lakh, but was not to be wholly waived of.

Setting aside of ex parte conditional order

An ex parte order for deposit of two lakh rupees was passed on the basis of original application filed in 1999. The opposite party did not appear in spite of service of summons. The application made in the year 2000 for setting aside the order. Considering the fact that an opportunity should be given to the opposite party to put forward their case, a conditional order was passed in the interest of justice and not by way of penalty.

Limitation to set aside an ex parte decree

The period of limitation is of thirty days to get an ex parte decree set aside decree and the time begins from the date when the decree was passed, but where the summons or notice

[24] Chahal Foods Ltd. v. State Bank of Patiala, (2003) 2 BC 65 (DRAT-Del)
[25] Ramesh v. Ratnakar Bank Ltd.,(2001) 1 BC 224 (SC)

was not duly served, the period of limitation begins from the date when the applicant acquires the knowledge of the decree[26].

Condonation of delay to be considered first

The tribunals must consider the matter of delay condonation first. Where the same was not done and the matter was sent back to the DRT for decision it was held that the debtor should first seek the leave of the court to furnish an affidavit on record and thereafter the bank should be given an opportunity to file a reply. On this aspect also the DRT was directed to pass appropriate orders. All this was held to be subject to the original order requiring deposit of five lakh rupees.

Condonation of delay for sufficient cause

Condonation of delay was allowed where the principle of natural justice was not observed in passing an ex parte orders. Condonation of delay was also allowed where conflicting issues required determination on merits.

Application for setting aside ex parte final order

Where the application for setting aside the ex parte final order was filed within 30 days of the delivery of the order and, therefore, was not barred by time, the order was set aside because it was passed due to some confusion between the client and the counsel. Costs of Rs. 15,000 were imposed[27]. The order was also set aside where there was no proper service by publication in news paper, the service was considered to be ineffective.

Writ against ex parte order

An application to set aside an ex parte order was dismissed by the Tribunal on the ground that no genuine reason was shown. An appeal which was preferred against this order was also dismissed. A writ petition was filed quashing the ex parte order and seeking further direction to the bank to follow the guidelines for one time settlement of the loan. The

[26] Article 123 of the Limitation Act, 1963,

[27] Ashok Malhotra v. Syndicate Bank,(2003) 3 BC 75 (DRAT-Del)

court said that the writ of certiorari could be issued only when there was an error apparent on the face of the record. No such error of law was pointed out by the petitioner. The finding of the fact was recorded by the Tribunal and Appellate Tribunal that there was no sufficient ground for non-appearance. The court could not interfere with this finding of fact under writ jurisdiction[28].

Service of notice not proved, setting aside of ex parte final order

Following principles of nature justice, the respondent bank should have attempted to serve the notice at the two addresses mentioned in the guarantee deeds. There has to be a proof that the service was avoided and no mode of service succeeded. Nothing of this sort was done by the bank or DRT Registrar. The Registrar, DRT was not right in directing substituted service by publication of notice, nor was the Presiding Officer of DRT right in accepting the service, by publishing of notice in newspaper, as valid service. The ex parte final order was set aside.

Appeal against refusal to condone delay

An appeal lies under Section 20 ,against any order setting aside an ex parte order. In view of this statutory remedy, a writ petition against such order is not maintainable[29].

Condonation of delay for filing appeal

In a case, the delay was not condoned because the conduct of the party was not proper. The party was advised to file an appeal but instead it preferred a review and filed an appeal against the dismissal of the review application which was also dismissed. The party then asked for condonation of delay in filing an appeal, but the condonation was not granted. The court held that where the petitioner failed to prove any sufficient cause, condonation may not be allowed where the repercussions of allowing it are more dangerous and also against the spirit of the Act[30].

[28] Vinod Kothari, Tannan's-Banking Law and Practices in India,1425 (Lexis Nexis,Gurgaon,26Edn.)
[29] Vinod Kothari, Tannan's-Banking Law and Practices in India,1426 (Lexis Nexis,Gurgaon,26Edn.)
[30] Ibid

Recall of ex parte order by Tribunal

The defendant was ordered to make a disclosure of all the properties weather movable or immovable belonging to him, solely or jointly. The order was not passed ex parte and both the parties were heard. Hence, there was no violation of natural justice. The order was not that of an attachment before the judgment. The power to order disclosure of assets is always there with a recovery Tribunal. There was no infirmity in not recalling the order[31].

No recall or restoration of ex parte order

Where the defendants were given several opportunities to file their written statement, but they failed to do so, the DRAT said that the judgment or order so passed would be covered under the expression" judgment or order made ex parte". The DRAT further laid down that no remedial measures, against an ex parte order would be available to a party who had constructive knowledge of a pending proceedings.

No appeal against Lok Adalat Award

No appeal lies against an order of the Lok Adalat for the recovery of amount due. Section 96 of the C.P.C, does not apply because of the specific prohibition contained in Section 21(2) of the Legal Services AuthoritiesAct,1987[32].

Courts/Tribunals may extend time granted by Lok Adalat

The time agreed or granted by the Lok Adalat is not provided under any statute. The time prescribed under any statute alone cannot be extended even with the consent of the parties. But where the statue itself is silent on the time , the court has discretion and jurisdiction to enlarge the time in appropriate cases. The Courts Tribunals are empowered to extend the time granted by the Lok Adalat to ensure the ends of justice.

[31] *Supra* note36 1427

[32] Punjab National Bank v. Shri Laxmichandchand Rai,(2000)2 BC 406 (MP-DB)

Representation for filing and conduct of application

A bank or a financial institution may hire one or more of legal practitioners or any of its authorized offices, to argue on its behalf before the Tribunal or the Appellate Tribunal. This section also contains enabling provisions that allows a defendant to appear in person or permit one or more legal practitioner or his officers to defend his case before the Tribunal (DRT) or Appellate Tribunal (DRAT)[33].

2.7 Process to approach DRT

A person approaching the DRTs, has two options at hi behest, he can either prefer a direct application or follow the course of action under the SARFAESI. Section 2(e) of the RDDBFI Act has laid down the categories of banks as for the purpose of the act:

(I) Banking company;
(II) corresponding new bank;
(III) State Bank of India
(IV) Subsidiary bank
(V) Regional Bank
(VI) Multi state co-agent bank.

Section 2(h) of the RDDBFI Act characterizes financial Institutions as:

(i) any public financial institution within the ambit of Section 4A of the Companies Act, 1956;

(ii) such other organization as the Central Government may, having respect to its business and the area of its operation in India, by a notification directs its representation under the SARFAESI act before the DRT.

[33] Section 23 of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

Application Route

The system of recovery under this mode is innitiated by making an application to (and not filing a suit with) the DRT and by paying the required charges. There are presently 32 DRTs in India in 22 can be found in unique locations. A few cities have more than one DRTs to manage the influx of huge number of applications being filed on daily basis. Section 19 of the RDDBFI Act stipulates the conditions for moving an application before the DRT. An application can be moved by a bank or financial institutions before a DRT exercising jurisdiction over the district where the defendant (at least one defendants, if they are more than one) really or intentionally resides, or conducts his business. An application may likewise be preferred before a specific DRT if the cause of action entirely or to some degree emerges inside the limits of its territorial jurisdiction.

SARFAESI Route

An application can be made before the DRT under the Securitisation and Reconstruction for Enforcement of Security Interest Act (SARFAESI), 2002. Before elaborating this point further, it is imperative to quickly unravel the SARFAESI Act. Like the DRT law, the SARFAESI Act was also the brainchild of a commission, particularly the Narasimham Committee – II (1998) followed by Andhyarujina Committee (1999). These commissions realized that it was necessary to reinforce the privileges of the secured lenders to help them recover their debts. SARFAESI sets out the law for achieving above objective without the interference of Courts or Tribunals.

The SARFAESI law prescribes the following procedures. Under section 13 (2) of the SARFAESI Act, after an advance has been identified as a non-performing assets (NPA) by the secured bank, a notice to this effect is sent to the concerned borrower. This notice should clearly specify the extraordinary amount to be reimbursed entirely within the time period of 60 days by the defaulter, coming up short which the secured bank is qualified for practice the rights . While the underlying provisions of the Act gave no rights to the borrowers to make a claim against this notice, a new provision introduced by Sub-section 7(3A) into SARFAESI Act permitted the borrowers to appeal against notice made under

Section 13(2). This appeal can be made against the secured loan only. The banks have to acknowledge the appeal of the borrower within fifteen days. If the borrower anyhow fails to fulfill his liabilities, sub-section 4 of section 13 of the Act empowers the secured creditors to take measures for the recovery, by taking control of the secured asset which also includes the right to transfer by way of lease, assignment or sale, usurping the management of the business or deploy any person to manage the affairs of the secured asset. The involvement of DRTs occurs when the collateral with the bank is not sufficient to recover the dues. In such cases where the loan borrowed from the secured creditors is not completely recovered with the sale proceeds of the secured assets, the creditors may directly approach the DRT for the recovery of the outstanding loan amount. The borrower also has the option to move an appeal before the DRT against the case of the creditor's. Prior to 2004, transitions from SARFAESI to DRTs used to be very expensive for the borrowers. An appeal before the DRT could be made by the borrower only after furthering 75% of the amount depicted in the notice of recovery issued under section 13(2). The DRT had the discretion to either let this amount be bargained or waived. This provision is mainly for giving some respite to the distressed borrowers who are in dearth of resources. Asking them to submit 75% which they might not be in apposition to pay. It may, ironically, be raised from the banks itself. The 2004 amendments permits appeal to be filed before the DRT by paying only the fees amount that is prescribed by the RDDBFI Act, and the same is applicable to all the applications filed before the DRT.

Post Filing: DRT Process

In order to accelerate the processes of adjudication by the DRTs and DRATs, they can also go for summary proceeding. The powers of the tribunal are quite significant. Section 19 (12) of the Act authorizes the DRT to make a pro tem order against the defendant in order to prevent him from disposing of any property and assets belonging to him without prior notice. The main inspiration behind This amendment was the observations laid down by the Supreme Court in **Mardia Chemicals vs. Union of India**[34]. As per Section 17 of the SARFAESI Act,section 13(4) enables a borrower to file an appeal against any

[34] AIR 2004 SC 2371

action taken by the creditor, with the prior permission of the tribunal. The tribunal also have the power to issue an order of detention of the defendant for a maximum of three months in the event of his to abide by an order or breach of any terms of an order, issued under sections 19(12), 19(13) and 19(18) of the SARFAESI Act. Under the direct application route, the recommended time period for the disposal of an application is 180 days from the date of its filing under Sections 19(4) of RDDBFI. For all the applications that are filed before the DRT under the SARFAESI Act, the tribunal is required to settle the matter within 60 days, with an extension of 4 months. If that period exceeded beyond 4 months, then section 17(6) of the SARFAESI Act entitles either party to the dispute to approach the DRAT seeking direction to the DRT for disposal of any pending application. The submission of an application to the DRT initiates the process of adjudication, summons are issued to the defendant requiring him to show cause within 30 days as to why relief prayed for by the applicant should not be granted. The defendant must submit a parawise written statement. The Tribunal enjoys the discretion to allow the defendant some more time to file his statement. The defendant can plead a set-off against any ascertained sum of money legally recoverable by him from the applicant by the applicant at the first hearing and not afterwards unless permitted by the Tribunal. A counter-claim against the claim of the applicant can be made by the defendant before delivering his defence. On the basis of the DRT's order, the Presiding Officer of the DRT issues a certificate to the Recovery Officer for recovery of the amount of debt specified in the certificate. The Recovery officer can recover dues by attaching, selling and appointing a receiver for the management of the defendants' property. The DRTs can also obtain a police warrant to arrest the defendant .

Post-Filing: DRAT

Any party aggrieved of the order passed by the DRT can prefer an appeal before the appellate body i.e. DRAT within whose territorial jurisdiction the DRT, passing the impugned order, falls. At present There are currently 5 DRATs in operation in cities like Mumbai, Delhi, Kolkata, Chennai, and Allahabad. The appeal against the impugned order has to be made within a period of 45 days, however, the DRAT can also extend this period. Additionally, the DRAT can also be approached for seeking interim relief in an

interim applications (IA) or a miscellaneous applications (MA) which are detailed out in the sub-sections of the section dealing with the original applications. Appeals to DRAT can be expensive. The aggrieved party that owes the debt is required to deposit 75% of the amount determined by the impugned order passed by the DRT[35]. However, This amount can either be reduced or even waived of by the DRAT. For appeals before DRAT arising out of the course of action opted under the SARFAESI Act, the appellant is required to deposit 50% of the amount which is claimed by the secured creditor or such other amount as determined in the order of DRT or, whichever is less. However an important point is that unlike proceedings under RDDBFI, the amount to be deposited for the appeal cannot be fully waived of but can only be reduced to 25% of the amount.

[35] Section 21 of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

CHAPTER-3

PROCEDURE TO BE FOLLOWED BY BANKS AND FINANCIAL INSTITUTIONS APPROACHING DEBT RECOVERY TRIBUNAL :

Section 19 of the DRT Act ,1993 lays down the detailed course of action to be adopted by the banks and the financial institutions (FIs) for invoking the jurisdiction the debt recovery tribunal (DRT) for the recovery of their debts with the assistance of the distinctive feature of this section, the applicant ought to approach that DRT within whose jurisdiction the defendants ,would reside or wherein the default of debt has taken place . The jurisdiction is decided based upon the fact as to where the cause of action arises.

Where the case is such that there two or more Banks or financial institutions raising claim for different value ofdebt in respect of the same defendant, the creditors have the option of joining together at any stage of the proceedings before the Tribunal proceeds with the passing of the final order. All applications should be made in a manner prescribed under the law, and should also be accompanied with the relevant documents and fee as prescribed, within 30 days of service of the notice by the Tribunal as to why it should not admit the claim made by the Bank or FIs. The defendant shall then present written statement in his defence. He may seek a set-off against any amount legally recoverable by the applicant's from him. The defendant may also raise any counter claim against the applicant by stating grounds supporting his defence[36].

The tribunal, under the law, is authorized to make an interim order by way of injunction or issue an attachment order against the defendant barring him from acts that may undermine the applicant's interests. It is also open for the DRT to direct the defendant to furnish security of such value as may be necessary for issuing a certificate for the recovery of debt. In case where the defendant fail to comply, the Tribunal may order attachment of whole of the property or any portion of it.

[36] Vinod Kothari,Tannan's-Banking Law and practices in India,1375,(Lexis Nexis 26Edn,2017)

If any party stands in defiance of an order passed by the Tribunal or breaches any of its terms, it may attract penal consequences for a term up to three months in civil prison. Where Tribunal (DRT) issues a certificate of recovery against a company , the order may also include a direction for the sale of proceeds of the securities those are to be distributed among its secured creditors, as has been prescribed by Section 326 of companies Act , 2013

The Tribunal (DRT) is clothed with all the necessary powers to ensure enforcement of its orders so that it can give effect to its certificate of recovery it issues.

3.1 APPLICATION FOR RECOVERY OF DEBT:

Bank or a financial institution which prefers an application before the tribunal for recovery of their debt are referred to as the applicants under Act whereas the person from whom the amount of debt is to be recovered is termed as the defendant. But the application form prescribed for the recovery of debt uses the terms applicant and respondent. Such application For all intent and purpose utility , is to be regarded as a plaint in civil suit and in the same way the parties would be called as plaintiff and respondent. The details which are required to be furnished in the application form in substance, are similar to those of a plaint under the Code of Civil Procedure, 1908[37]

There is nothing wrong if the bank files the application through one of its responsible officer who was well acquainted with the facts of the case and relevant documents. The subsequent production of true copy of Power of Attorney (PoA) is a substantial evidence in holding that he was properly authorized to file the suit, Therefore the objections raised on behalf of the defendant had no merit. The suit was properly filed by the bank[38].

Where the averments in the application and the facts stated by the witnesses of the applicant Bank in the Affidavits were not rebutted, and their statements were corroborated from the documentary evidences on record and the statement of account. There was no reason to disbelieve the evidences adduced on behalf of Bank. The

[37] Western Agencies(Madras) Ltd. V. Joint Commissioner of Tax,(2003) ITD 462 (Mad)
[38] Ram Industries v. Punjab National Bank,(2000) 1 BC 89 (DRT- Mum)

application succeeded for recovery of Rs3,29,76,897 with costs and interests at contractual rate from all defendants severally and jointly.

3.2 DOCUMENTS TO BE FILLED WITH APPLICATION:

Every application to the DRT shall go along with a paper-book containing[39]:

(1) Detailed statement of debt due from a defendant and the circumstances that lead to the debt being due;
(2) All documents upon which the applicant relies with those that are mentioned in the application;
(3) Full Details of the crossed demand draft or crossed Indian Postal Order representing the application fee;
(4) Index of documents[40].

Not only those documents that are being relied upon but also the mentioned documents should be filed along with the application. The defendants /respondents are entitled to have copies of the documents which are mentioned in the original application before they are directed to file their defence. Once a document has been mentioned in the pleadings , the other side has the right to get a copy of the same. The defendant has to be given all the documents annexed with the original application and then only he can be called upon to present his defence.

A single application for the recovery of more than one debt is maintainable as according to the Sections 17 and 19 of the RDB Act, 1993 and Rule 10 of Debt Recovery Tribunal (Procedure)Rules, 1993.

A Firm that has availed four types of loans ,and In respect of all of them the security was the same immovable property. There was also a single guarantor for all heads. The Contention that all the heads of liability could not be clubbed into a single

[39] Section 19(3) and 22 of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

[40] Rule 9 of the Debt Recovery Tribunal (Procedure) Rules, 1993

original application, was not accepted. Indeed such clubbing was necessary because there was a single security and single guarantor for all of them.

3.3 FEES PAYABLE:

Fees payable on application to DRT[41]:

An application under sub-section (1) and (2) of Section 19 has to be accompanied by such fee as may be prescribed which shall be determine on the basis of the amount of debt to be recovered.

Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 prescribes fee payable on application, which is Rs.12,000 where the amount of debt due is Rs.10 lakhs, and for any amount more than it the fees payable will be Rs12,000 plus 1000 for every Rs.1 lakh in excess of Rs.10 lakhs subject to a maximum of Rs1,50,000. This provision about fee has been held to be valid in **Digvision Electronics Ltd. v Indian Bank[42].**

Sction 30 of the RDDBFI Act, 1993, does not make any distinction between a final order and the interim order. An appeal could be filed against any order of the Recovery officer, be it the final order or an interim order. If a distinction cannot be drawn between two sets of orders passed by the Recovery Officer for filing an appeal, on the same footing , a distinction can also not be drawn between two sets of appeal filed against an order of the Recovery Officer for the payment of court fees. The petitioner preferred an appeal against an order, rejecting the application for stay of recovery proceedings before the Recovery Officer, and sought waiver. The court held that Item No.5 of the Table under sub-rule (2) of Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993, would be applicable and the court fee would become payable on an appeal filed under section 30 of the RDDBFI Act,1993[43].

[41] Section 19(3) of of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993) and Rule 7 of the Debt Recovery Tribunal (Procedures) Rules, 1993

[42] (2004) 4 SCC 311

[43] Madhukant pranlal shah v. Bank of india,(2007) 138 Comp. CAs.715 (Guj)

The fee on counter claim- The provision enabling the Debts Recovery Tribunal (DRT) to entertain counter-claims is only meant to bring about a final order. As there was no provision for payment of fee for filing a counter-claim, therefore, The Rules were amended for prescribing fee on counter-claims which was also held to be valid. The amendment was not given retrospective effect. Hence, no fee was payable on any counter-claims already filed before amendment[44] .

3.4 DEFECTS IN APPLICATION:

If the application filed under the Act is found to be defective after the through scrutiny by the Registrar of the Tribunal (DRT) and the defect is of formal nature, the Registrar may give the applicant such time to rectify the defect is not found to be formal in then the Registrar may allow the applicant such other time that may be needed to correct the defec,t as he may deem fit[45]

If the applicant , even after being given sufficient time to correct the defect under sub-rule (3),has failed to do so, the Registrar may by passing an order and recording the reason to that effect in writing ,may decline to register the application [46]

A party aggrieved by the order of the registrar, under sub-rule (4),may prefer an appeal against the same within 15 days of the making of such order. Such appeal shall lie before the Presiding Officer concerned and his decision on the issue shall be final[47]

Where there are defects in the application, the applicant should be given at least one opportunity to cure the defects. The Tribunal cannot dismiss/reject the application merely because it is defective and not in accordance with the Rules. Section 22 of the RDDBFI Act, 1993 has clearly provided that the DRT shall not be bound by the provisions of the C.P.C, and shall have power to regulate its own procedings. Where on the scrutiny of the application, certain defect could be seen,as in the instant case, translated copies of Telugu

[44] Vinod Kothari, Tannan's-Banking Law and Practices in India,1378,(Lexis Nexis,26 Edn,2017)
[45] Rule5(3) of DEBTS RECOVERY TRIBUNAL (PROCEDURE) RULES, 1993
[46] Rule5(4) of DEBTS RECOVERY TRIBUNAL (PROCEDURE) RULES, 1993
[47]Rule5(5) of DEBTS RECOVERY TRIBUNAL (PROCEDURE) RULES, 1993

documents were not filed along with the original application, but counter affidavit stated that they shall be furnished at the time of the trial, the defect was held to be removed.

For filing of application, the Bank and Financial institution, for the recovery of debt from any person, may make an application to the tribunal within the jurisdiction of which:

(1)The branch or any other office of the bank or financial institution which is maintaining an account in which debt is being claimed to be due for the time being or:

(2) the defendant or defendants(where there are more than one) at the time of making the application actually and voluntarily resides or carry on business or personally work for gain or

(3) Any of the defendants(where there are more than one) at the time of making the application actually and voluntarily resides or carry on the business or personally work for the gain or

(4) the cause of action wholly or in part arises or;

The Bank or Financial Institution can with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application. An Application for withdrawal shall be dealt with as expeditiously as possible and disposed of within thirty days from the date of such application. In case, the Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section , it shall pass such orders after recording the reason thereof.

No presumption as to bank documents

There can be no presumption in law that bank documents and bank officers are always truthful and the citizens or borrowers are liars or false. The legitimacy of all such documents are to be tested by the application of the law of evidence.

Proof of disputed documents

Request for examination of disputed documents, was not allowed to be ignored only because it was likely to take time.

Ex parte order for production of documents

Relevant documents were not produced by the bank. An ex parte injunction order was issued against the bank. This order was affirmed because huge sums of public money were involved. The Presiding Officer was entitled to pass interim order to safeguard the interest of the lending institutions under Section 19(12) and (25) of the DRT Act.

Appeal after Amendment in RDB Act, 1993,[48]

After the amendment, an appeal is allowed to the Tribunal (DRT) against the order of the Recovery Officer and further to the Appellate Tribunal (DRAT). This is sufficient safeguard to protect the intrest in case the Recovery Officer acts in an arbitrary and unreasonable manner.

Framing of issues[49]

Only those issues can be tried as preliminary issues which would determine the suit itself. The Tribunal has the power to regulate its own procedure. There is no procedure on framing of issues. The refusal of the Tribunal to consider preliminary objections as preliminary issues did not call for interference.

Procedure guided by natural justice

The procedure of the Tribunal is guided by principles of natural justice. In one of the cases the guarantors of the debt denied that they had signed on the guarantee deed and asked for expert opinion on handwriting. The application was dismissed as frivolous, however, it was held that it was sheer violation of natural justice. Therefore, The Tribunal

[48] Section 20 of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

[49] Section 22 of the of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

was instructed to send the signature for seeking the opinion of handwriting expert. The Division Bench of Hon'ble Bombay High Court observed that there is no presumption in law perpetuating blind trust upon the Bank documents and Bank officials believing them to be always truthful and at the same time disbelieving the citizens or the borrowers[50]. Tribunal's power under Section 22(2) of the Act, 1993 enjoy wider powers than a civil court, where the Only limitation is that, they should observe the principles of natural justice.

3.5 Cross-examination of witnesses [51]

The Debts Recovery Tribunal (DRT) has no option to refuse production of witnesses for cross-examination. There were allegations that the bank created false and forged balance continuation acknowledgement and revival letters to overcome the bar of limitation, the Tribunal (DRT) rejected the prayer. The court said this approach of the DRT violated the principles of natural justice and Rule 12(6) of the DRT Rules, 1993. Writ jurisdiction could be used to set right such injustice.

The right to cross-examine the witness of the other side who has filed Affidavits in evidence depends upon the facts and circumstances of each case. The main purpose of the same should be to impart substantial justice to the parties. Under the RDDBFI Act, 1993 (the DRT Act), the Debts Recovery Tribunal (DRT) and the Debts Recovery Appellate Tribunal (DRAT) are to guide themselves by the principles of natural justice. When necessary, cross-examination of the witness of the opposite party should be allowed to straighten the factual folds and to render the picture clear for the right decision of the controversy. Where the appellants had given good and sufficient justification for cross-examining the witnesses, the parties were directed to appear before the DRT on specified date for cross-examination of witnesses[52].

[50] Supra note 51 1379

[51] Rule 12(6) of DEBTS RECOVERY TRIBUNAL (PROCEDURE) RULES, 1993

[52] Vinod Kothari, Tannan's-Banking Law and Practices in India,1380 (Lexis Nexis,Gurgaon,26Edn.)

Cross-examination should be permitted when it is necessary and not when it is a play of the defendant to prolong the case. The cross-examination has to be permitted where the witness in question has submitted an affidavit.

Writ jurisdiction cannot be used for seeking an order of cross-examination of the deponent in recovery proceedings, efficacious remedy of appeal is available under the Act.

3.6 IMPLEADMENT OF PARTIES, BANKS AND FIs

Impleadment of other bank/financial institutions[53]

Where any Bank or a Financial Institution, which endeavors to recover its outstanding debt from any person, has preferred an application before the Tribunal under Section 19 (1), and against the same defaulter another Bank or FI also has raised a claim to recover their debts against him, the later parties have the option to join the applicant bank or FI at any stage of the proceedings, before the final order is delivered. By making the application before the Tribunal (DRT) Any other Bank/Fl can also be made a party to the dispute under the main application under Section 19(2), before a final order is passed.

Impleadment after adjudication not permissible

In **Allahabad Bank v. Canara Bank**, the Lordship of the Supreme Court observed that Section 19(2) of the DRT Act, 1993 permits other banks or financial institutions to become a party, contesting under the main application filed under Section 19(1) by the Bank or a financial institution initiated the proceedings. Section 19(2) permits such impleadment "at any stage of the proceedings before a final order is passed". The final order here means the order of adjudication as has been passed under Section l9(1) determining whether the debt is due or not. In one of the case, the tribunal had already

[53] Section 19(2) of the of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

passed the adjudication order with respect to the debt long back and, therefore, Section 19(2) did not permit any new impleadment in the dispute through the main application under Section 19(1) at that stage, hence, this relief for impleadment could not be granted.

Impleadment of necessary parties

A purchaser of mortgaged property cannot be impleaded in proceedings before DRT. Where after filing of application, a third person purchases the suit property, mortgaged property in the instant case, the purchaser cannot be impleaded ex-parte.

Impleadment of subsequent transferee of property pendente lite is not essential to adjudicate upon the issues between the parties and he has no locus standi to appeal.

Impleadment of necessary party is not a substantive right but one of procedure. Act confers no suo-motu powers on the Debts Recovery Tribunal (DRT) to implead a party nor semblance of such powers canbe gathered from Section 22 of the Act.

3.7 WRITTEN STATEMENT

Filing of written statement

Where the right to file written statement was closed without supplying a copy of the paper book, the order was quashed with permission for filing the written statement. Explaining his conduct in closing the filing of written statement, the Presiding Officer had observed that the counsel was watching the proceedings from outside and appeared only after the order had gone against his client. This remark was also expunged. After the set of papers was supplied, the defendants no doubt were expected to file the Wntten statement. But they remained absent. Presiding Officer was, therefore, justisfied in marking them as absent but he was not justified in rejecting their application.

Filing of written statement should not be postponed on superficial grounds
Where the defendants (appellants) instead of filing the written statement filed an appeal for a direction to the bank to place on record the documents as well as revised statement of accounts to enable them to tile written statement. The DRT granted a last opportunity to them to file written statement within 30 days, failing which the opportunity to file

Written Statement would stand closed. On appeal being dismissed. the DRAT held that there was no justifiable reason for appellants to, not to file the written statement on the pretext of the need for other documents and statement of accounts. The loan documents. equitable mortgage and statement of accounts were in place. Audited balance-sheet of appellants had also been filed. Rule 9 of the Debts Recovery Tribunal (Procedure) Rules, 1993. has to be understood and interpreted in a logical way instead ofa pedantic manner providing a platform to a defendant to postpone the filing of written statement taking shelter under the rule on superficial grounds The order passed by DRT could not be interfered with.

Written statement not filed in recovery suit

One of the defendants failed to file the written statement. The case proceeded ex parte without any denial of avennents in the plaint. The averrnents mentioned in the plaint and documents filed, sufficiently proved the claim. The defendants were held liable to pay the claim amount jointly and severally with interest at 24. 5% p. a compounded quarterly from date of suit till realisation and costs

Filing of written statement subject to costs

Other defendants who were served with notice were yet to submit their written statements. The matter was already under adjournment. No prejudice would be caused to the applicant bank if a fresh opportunity was given to the defendant to file written statement subject to payment of costs of Rs 2, 500

Judgment in absence of written statement [54]

If no written statement is found indicating the active participation in the proceedings, the Tribunal may, after following the civil court system, pass a neccessary judgment for want of the written statement which 13 in the nature of a counter pleading.32

[54]Section 19(24) of the Recovery of Debts due to Banks and Financial Institutions Act,1993 (Act 51 of 1993)

3.8 EVIDENCE ON AFFIDAVIT

Power to receive evidence on Affidavit

[Rule 12(6)] The Tribunal (DRT) may require any particular fact to be proven by furnishing an Affidavit or may require Affidavit of any witness to be read at the hearing, for the same it must record sufficient reasons for passing such order. DRT has power to regulate it's procedure, [Rule 12(6)].

3.9 COUNTER-CLAIM

Power of DRT to entertain Counter-claim

The DRT Act, 1993 was amended (w.e.f. 17-01-2000). The DRT has been empowered to consider counter-claim of the defendant under Section 19(8) and objections, if any, raised by the bank as provided in Section 19(11) of the Act.

Set-off and counter-claim [Section 19(6) to (11) of the RDB Act, 1993] In **Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corporation**, the Supreme Court has held that prior to the amendments in the DRT Act, 1993 i.e. before 2000, a plea of set off or counter-claim could not be raised by a debtor. The amendment of Section 19 of the RDDBFI Act empowered the Tribunal (DRT) to determine a claim of set off and/or counter claim. Cofex Exports Ltd. case is the landmark case. Jurisdiction of a civil court is barred only in respect of the matters which strictly fall within the purview of Section 17 thereof [the RDDBFI Act, 1993 (51 of 1993)] and not beyond the same. The Civil Court, therefore, will also continue to enjoy jurisdiction even in respect of set off or counter-claim, having regard to the provisions of Section 19(6) to (11) of the DRT Act, 1993. In view of this, the Punjab and Haryana High Court could not have transferred the suit from the Civil Court Ludhiana to DRT.

The term counter-claim in Section 19(8) to (11) of the RDDBFI Act, 1993, which is equated to a cross suit, includes even a claim made in an independent suit filed earlier than the suit of the[55]bank or financial institution. However, if any particular counter-claim cannot be decided by the Tribunal while deciding the bank's suit, such counter-claim may be excluded upon application by the defendant. Where the suit of the respondent company was for Specific performance of an agreement by appellant bank to extend credit facilities and to refrain from charging interest on its outstanding dues for particular period, and there was also prayer for permanent injunction directing the bank not to charge such interest, and the bank had subsequently filed suit for recovery against the company, it was held that the suit of the company being in nature of counter-claim was also liable to be transferred to the Debts recovery Tribunal (DRT).

Nexus of counter-claim with suit

A counter-claim must have nexus with the suit so that it can be conveniently tried in that suit. It is definitely a cross-suit though it has the character of a counter-claim. The expression counter~claim under Section 19(8) of the RDDBFI Act, 1993 (51 of 1993) is the reproduction of what has been enunciated in Rule 6A, Order VIII of the Code of Civil Procedure, 1908 (5 of 1908) (C.P.C) with a simple twist of language.

Court-fee on counter-claim

A counter-claim has the same effect, that an application has for recovery, under Section 19 of the DRT Act. The requisite fee has to be paid (Rule 7).Where a counter-claim was treated as a cross-suit, it was held that it should be accompanied by requisite court-fee as required under the DRT Act. The words "shall be accompanied" connote prospective operation and not retrospective. The rules give a sufficient indication that they are meant to be prospective. They were brought in by an amendment for levying court-fee on

[55] M/s Panjwani packaging Ltd. v. Allahabad Bank , writ petition (civil) 1803/2015 (decided on 25-02-2015).

counter-claims.

Counter-claim, filing after written statement

A counter-claim presented at the behest of the defendant, must be filed at the earliest opportunity. Though it is permissible to file it after the submission of the written statement. A counter-claim should be filed before the commencement of the evidence. Earlier under the provision contained in law was that, the DRT was not competent to entertain counter-claims. However, after the introduction of amendment to the DRT Act, 1993 (w.e.f. 17-01-2000), a right had been conferred on the defendant to file a counter-claim. The amendment is contained in Section 19(8) of the DRT Act, 1993. Further, by introduction of this new Section 19(10A) of the RDB Act, 1993, vide the Enforcement Act 2016 w.e.f. 01-09-2016, for any application of counter claim, an affidavit sworn in by the Applicant has to be submitted to support the application.

A counter-claim can be filed after filing of written statement. Both the claim and counter-claim were pending before DRT since long for adjudication. The cause of action "as common to both. It was held that the objection by the bank regarding belated stage for entertaining counter-claim had no leg to stand. The issue of limitation was neither raised in the original petition filed by the bank, nor the parties were heard on the point. When the DRT decides to adjudicate both the claim and counterclaim filed as per rules with requisite fee minor irregularities cannot be permitted to clog the wheels of justice. The interest of justice required that both of them should be dealt with at the earliest.[56]

Enhancement of counter-claim

Enhancement of the amount of counter-claim can be allowed if the same is still within the period of limitation. Arguments about limitation can be heard, considered and disposed of at the trial. A time barred counter-claim cannot be entertained. In this case it was found

[56] State Bank of India v. Madhumita Construction P. Ltd. , (2003) 2 BC 610 (cal) :AIR 2003 Cal 7.

that such counter-claim was being hammered to delay and drag proceedings.[57] The grant of leave to amend written statement by way of counterclaim for damages in proper exercise of discretion of the Tribunal (DRT) falling in the purview of provisions contained in Section 19(8) of the RDB Act, 1993 was not interfered with.[58]

Filing of counter-claim in composite manner

The defendants sought to incorporate their counterclaim by way of an amendment application in the written statement already filed by them. Such composite manner of filing was not permissible. They had to pay the requisite fee.

Counter-claim before filing of counter-affidavit

The opportunity to file counter affidavit was not yet closed, although the bank had already filed its evidence on affidavit. The counter-claim, if filed after filing of evidence by the bank might cause prejudice to it. When the counter-claim is within the period of limitation, the defendants could file a fresh claim suit, even if not so permitted. The defendants had still not filed their counter affidavit and the hearing was yet to commence It was held that the bank was free to file additional evidence The defendants were granted leave to file counter-claim.

3.10 ADJOURNMENT

Adjournment on reasonable ground

The Tribunals under the Act have been constituted to ensure expeditious adjudication under the RDDBFI. The first respondent's application has been pending before the Tribunal, for more than six months. Unless the defendants make out a reasonable ground to seek an adjournment, they are not entitled to an adjournment, merely because the defendants did not find it convenient to proceed with the matter or because the defendants

[57] Canara Bank v. Associated Founders , (2003) 3 BC 6 (DRAT - Chen).

[58] Govind M. Pujara v. Bank of India, (2009) 1 BC 548 (Raj) (DB).

or their counsel were not prepared to proceed further with the case; and in such circumstances refusal by the Tribunal to allow adjournment would not amount to violation of principles of natural justice. It could not, therefore, said that the order had resulted in the miscarriage of justice, calling for interference[59]

Bank seeking single piece adjournment

The bank moved the tribunal for recovery of outstanding debts. It was held that the bank which was pursuing the suit for the recovery of its dues could not be branded with negligence merely because it sought the single piece adjournment. The principle of natural justice required that one more opportunity be given to the bank for adducing evidence. Dismissal of the suit on the ground of the plaint being not signed and verified by a competent person was not proper.[60]

Adjournment by DRT in interest of justice

In a recovery suit before DRT, no written statement was filed. It was merely stated that the invocation of bank guarantee was illegal and that on the same subject matter, arbitration proceedings were pending between the parties. The DRT said that the party could not be heard to say that DRT should be adjourned till finalisation of arbitration. DRT was entitled to pass appropriate orders to secure ends of justice. The party is entitled to put before the DRT all pleas open to it under the law to oppose the original application. It was for the DRT to decide whether the objections were sustainable or not. It could not be said that the ends of justice if the proceedings before DRT were stayed.[61]

[59] Punjab National Bank v. Seraikella Glass Work Ltd., (2004) 4 BC 235 (DRAT-Ran).
[60] Baby Sebastian v. Vijaya Bank, (1997)2 BC 540 (Ker) :1997 ISJ (Banking)107.
[61] Madan stores P. Ltd., v. Central Bank of India , (2003) 3 BC 134 (DRAT-Del).

Refusal of adjournment

Where the application of the bank manager seeking adjournment because of illness supported by medical evidence was rejected and ex parte order was passed, the order was set aside. It was a solitary adjournment sought by the bank.

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Adjournment with costs[62]

Application for adjournment was supported by medical certificate. DRT did not decide the matter on merits, but granted exemplary costs. This was not approved by DRAT.

3.11 INTERIM OR INTERLCUTORY ORDERS

Interlocutory orders for preservation of status quo

The purpose behind passing of an interlocutory orders is to protect in status quo the rights of the parties to the despute, so that the proceedings do not become infructuous by any collateral act of one party or the other during pendency of the case. The prayer was for interim relief by staying the attachment order. The court said that the Tribunal was to take care to see that the application was not acted infructuous. Interim relief could be granted for the interests of the decree-holder and those of the judgment debtor. An order of interlocutory injunction is passed With a View to preserving and protecting status quo the genuine rights as on the date of issuance of the order. Any alteration in the status quo after such order can be made only with the sanction of the court.

Restraining borrower from dealing with assets

The lending bank was held entitled to recover from properties mortgaged and hypothecated and for this reason defendants were restrained from depleting, transferring, encumbering or in any way dealing with the assets without first satisfying the bank's claims.

[62] Sections 20 and 22(2)(g)

Injunction against alienation of property

The defendant was liable to pay a huge amount to the bank to the tune of Rs. 23 crores. The original rights of the defendants were transferred to a trust after filing of the original application . It was felt to be just and necessary that the defendants' application be injuncted from selling, alienating, transferring or dealing with property. There was no error in Presiding Officer passing such order. An injunction order against alienation of properties does not stand in the way of making or competing construction. The balance of convenience for a temporary injunction was in favour of the bank.

Ex parte injunction to prevent the sale of property

An ex parte injunction was granted where the bank apprehended that the property would be sold making it difficult for the bank to realise its dues. An ex parte blanket injunction order not justified with respect to the entire property belonging to the judgment debtor. Only such portion of the property as would satisfy the decree should be allowed to be sold. The Supreme Court had deprecated the tendency to blind fold sell the entire property. The order was held to be illegal.

Sale not to be ordered prior to the issuance of the decree and recovery certificate

Until a decree is passed and recovery certificate issued, sale of property cannot be ordered. The question of interim sale does not arise when original application itself is pending. Since the matter had been pending for a long time and heavy state of amount was involved, the Presiding Officer, DRT directed disposal within a period of one month and in accordance with the law.

Every order of DRT appealable

An appeal is maintainable against every order of the Debt Recovery Tribunal (DRT). The use of the word 'final' in Rule 5(5) does not take away the right of an aggrieved party to file an appeal against DRT orders.[63]

[63] Ramesh Chand v. Global Trust Bank , (2003) 2 BC 6(DRAT- Chen).

3.12 POWER TO GRANT INIUNCTION

DRT has power to grant injunction

The Debts Recovery Tribunal (DRT) enjoys the power to pronounce any other types of stay orders or injunctions. It may issue notice and after giving an opportunity of hearing to the opposite side, pass orders, or, it may pass ad interim orders without hearing the opposite side and then give a subsequent hearing to the opposite party and pass final orders. Section 22(2) of the DRT Act, 1993 does not restricts the general powers referred to in Section 22(1). All that section 22(2) seeks to provide is that, in respect of the applications falling under subsection (a) to (h) , the Tribunal is conferred with the powers as are vested in a Civil Court.

Factors in granting ex parte injunctions

The factors which the Supreme Court said should be taken into account by the Court or Tribunal for considering the grant of ex parte injunction may be noted. These are:
(a) Whether irreparable or serious mischief will ensure to the plaintiff.
(b) Whether the refusal to grant ex parte injunction would result in greater injustice than the grant of the same would involve.

(c) The court will also take into account as to when the plaintiff first had the notice of the act complained so as to avoid the making of improper order against a party in his absence.
(d) The court will consider whether the plaintiff had acquiesced for sometime and in such scenario it will refrain from granting ex parte injunction.
(e) The court would except a party making request for ex parte injunction to show utmost good faith in pursuing the same.

(f) Even if granted, the same would stand only for a limited period of time. (g) General principles like, balance of convenience and irreparable loss would also be considered by the court

No writ against Interim orders of DRT

A writ petition challenging the interim order of the Debts Recovery Tribunal (DRT) is not maintainable, but provision of appeal before DRAT is available under Section 20 of the RDDBFI Act. In the context of Sections17(2) and 20(1), the words "any order" or "an order" of the Tribunal made under the Act include every order of DRT made under Act which affects the rights or liabilities of the parties. Even an interlocutory order passed under the DRT Act is an order passed under the Act and is subject to appeal under Section 20(1) provided it affects some right or liability of any party. The DRT Act provides an adequate and efficacious remedy for obtaining relief in respect of any improper order passed by the DRT. The writ remedy provided under Article 227 of the Constitution of lndia is not intended to supersede the modes of obtaining relief before Appellate Courts or Tribunals.[64]

3.13 APPEALS TO APPELATE TRIBUNAL

Any party which happens to be aggrieved by an order pronounced or deemed to have been pronounced by a Tribunal may pursue an appeal to an Appellate Tribunal enjoying jurisdiction over the matter. However, no appeal shall lie before the Appellate Tribunal out of an order given by a Tribunal with the consent of the parties. An aggrieved person may file an appeal before the Appellate Tribunal against an interim order of the Tribunal.

The RDDBFI Act, 1993 is a self-contained Act. The Debt Recovery Appellate Tribunal created under the Act is not empowered to go beyond the wisdom of Parliament providing for appeals before it against any order passed by the Debt Recovery Tribunal under section 17(2) of the Act and carving out an exception under section 20(2) prohibiting appeals against consent orders passed by the Debt Recovery Tribunal. Where

[64] National Bank v. presiding officer , DRT , (2003) BC 695 (Cal).

the Debt Recovery Tribunal had passed an order setting aside an ex parte decree of the Tribunal and at the same time imposing a punitive condition of Rs. 30 lakhs by the petitioner, and the Debt Recovery Appellate Tribunal had dismissed the appeal against the order, on the ground that the order of the Debt Recovery Tribunal was an interlocutory order which was not appealable. When the order was challenged by a writ petition, the Allahabad High Court held that the order in question was not a consent order, and was thus appealable within the scope of section 17(2) and section 20(1) of the Act subject to. payment of fee as prescribed in the Rules. The order of the Debt Recovery Appellate Tribunal was in breach of the mandatory provisions envisaged in section 17(2) and section 20(2) and (3) of the Act on its own assumption and presumption borrowing general principles of law that such orders were interlocutory orders and on that basis holding that the appeal was not maintainable. If the views of the Debt Recovery Appellate Tribunal were accepted, it would render section 17(2) redundant which was impermissible. The right of appeal was a creation of statute which could not be taken away by any Court or Tribunal without taking into account all the relevant sections of the Act conferring the right of appeal against an order. Section 20 could not be interpreted in isolation of section 17(2). The Court instructed the tribunal for the disposal of the appeal on merits in accordance with the law[65].

Order of Debt Recovery Tribunal directing recovery of sum till full and final satisfaction of loan amount is appealable under Section 20 of the same Act. Generally a writ petition should not be entertained unless the petitioner has exhausted statutory remedy. Thus, where the plea raised by the petitioner was that an order was passed by the Debt Recovery Tribunal in his absence and was not communicated to him, it was held that the issue involved is factual and cannot be adjudicated upon in writ petition.

In **Nihon Nirman Ltd. v. Debt Recovery Tribunal[66]**, the petitioner filed a writ petition challenging the order passed by the Debt Recovery Tribunal contending that the Debt Recovery Tribunal had passed the impugned order without affording an opportunity and without assigning any reason. The respondent, however, challenged the maintainability of

[65] Lily Chemicals Pvt. Ltd. V. Chairperson, Debt Recovery Tribunal ,(2002) 110 Comp.Cas.
[66] (2004) 54 SCL 74 (CLP) (Raj)

the writ petition on the ground that the petitioner without availing the alternative remedy provided under section 20 had directly approached the Court. It was held that in the facts and circumstances of the case, the power vested under Articles 226 and 227 need not be exercised as the alternative efficacious remedy was available to the petitioner under section 20 of the Act. The petitioner was advised to invoke the provisions of section 20 by way of filing an appeal alongwith stay application against the impugned order of the Debts Recovery Tribunal.

.In **Daisy Puthran v. Recovery Offiicer**[67], Debt Recovery Tribunal, it was observed that in a petition where challenge is made against the action of an authority statutorily constituted, as one without jurisdiction and the notice issued as contrary to the provisions of Articles 13 and 14 of the Constitution, is not liable to be dismissed on account of an alternate appellate remedy available under the statute. If there is any statutory violation in issuing notices, then the remedy under Articles 226 and 227 of the Constitution is certainly available to the aggrieved person.

In **Sushil Kumar Jaiswal v. Bank of India**[68], the petitioners filed a writ petition against the order passed by the Tribunal without filing an appeal before the Appellate Tribunal. The High Court held that the petitioner did not approach the Appellate Tribunal to by-pass section 21. The scope of section 20 is much more wider than the scope and ambit of Article 227 of the India Constitution of India. The Court observed that the petitioners have attempted to convert the power under Article 227 of the Constitution of India for the exercise of the power under section 20 of the Act. The petitioners could come before the High Court against an order passed under section 20 of the Act i.e., against an appellate order because nothing is provided in the Act specifying any higher forum against the appellate order and in such circumstances, it was open for the petitioners to approach the High Court either under Article 226 or 227 of the Constitution of India and to convince the High Court that they have no alternative remedy.

[67] (2004) 54 SCL 174 (SCL) (Ker)
[68] AIR 1996 Cal 323

In **State Bank of India v. Shyamji Sales**[69], in a suit filed by the appellant-bank against the respondents for recovery of a loan, the Debt Recovery Tribunal passed a decree and issued a recovery certificate for the amount claimed carrying interest at the rate of 21.5 per cent. with quarterly interest along with other reliefs. The respondent filed a writ petition, which the single Judge allowed remanding the case to the Debt Recovery Tribunal and permitting the judgment debtor to file a written statement against payment of cost to the decree holder. On appeal by the bank, a Division Bench of the Madhya Pradesh High Court held that in the final adjudication of the dispute by the Debt Recovery Tribunal, a decree had been passed for a specific amount and certificate to that effect had been issued. Simply because the judgment-debtor had to pay 75 per cent. of the decretal amount before the appeal was entertained, it would not vest him with the choice to approach the High Court and challenge the final order of the Debt Recovery Tribunal. The RDDBFI Act, 1993, had been enacted by Parliament to provide for quick remedy for realisation of huge loans taken by the person from financial institutions and banks when the existing modes of recovery were not found adequate. Therefore, the writ petition against the decision of the Debt Recovery Tribunal could not be entertained. The judgment-debtor should have approached the Appellate Tribunal under section 20 of the Act, if it had any grievance against the order of the Debt Recovery Tribunal.

In **Agarwal Tubes Pvt. Ltd. v. Debt Recovery Tribunal**[70], on a writ petition challenging the decision of the Debt Recovery Tribunal on an interim application by the petitioner-company in a suit for recovery by the respondent, refusing to call for documents from the office of the Registrar of Companies, contending that although the company had filed an appeal to the Debt Recovery Appellate Tribunal, the office of the Presiding Officer of the Debt Recovery Appellate Tribunal had fallen vacant, and the Court should entertain the petition, the Rajasthan High Court observed that after obtaining several adjournments for the purpose of presenting final arguments, on the final occasion, instead of presenting arguments, the company submitted an application for production of documents from the Registrar of Companies. Thus the petitioner had

[69] (2003) 115 Comp. Cas 567 (MP) (DB)
[70] (2002) 110 Comp. Cas. 633 (Raj)

adopted delaying tactics. This conduct of the petitioner company had to be condemned and the petitioner had itself to blame for delaying proceedings before the Appellate Tribunal. Dismissing the petition, the High Court held that it should not entertain petitions against interlocutory orders.

In **Ashoka Alloy Steel Ltd. v. Central Bank of India**[71], the petitioner-company aggrieved by the order of the Company Judge, preferred an appeal,directing the Official Liquidator to take over its affairs upon the recommendation of the BIFR which had recommended winding-up. The Division Bench ordered maintenance of status quo. The respondent-bank which was a creditor of the company, with the permission of the Company Judge, filed an appeal against the company under section 19 of the RDDBFI Act, 1993, for recovery of money. The application was allowed. Against that order an appeal was preferred before the Appellate Tribunal. In the meanwhile, the Recovery Officer had passed an order under the 1993 Act against which the petitioner had preferred an appeal. The Tribunal ordered that the decree was executable against all the judgment-debtors except against the company in liquidation. The order became final. In a writ petition, the petitioners contended that the respondent-bank was bound to act upon the guidelines issued by the Reserve Bank of India in the year 2003. But the respondent bank took the stand that the guidelines were not applicable to the case of the petitioner. Dismissing the petition, a Division Bench of the Himachal Pradesh High Court held that, in View of the decree passed under section 19 of the 1993 Act and the pendency of an appeal against the said order, it was open to the petitioners to raise all the contentions before the Appellate Tribunal. The writ petition under Article 226 of the Constitution was not maintainable.

.**Procedure of filing appeal before the Appellate Tribunal**.

Every appeal before the appellate tribunal shall be made within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made by the Tribunal, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal also has the power to

[71] (2004) 122 Comp Cas 777 (HP) (DB)

entertain an appeal even after the expiry of the said period of forty-five days, if it is satisfied that there were sufficient cause for not filing an appeal within that period[72].

Form of appeal

A memorandum of appeal shall be presented in such form as has been laid down in, Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 by the appellant either in person to the Registrar of the Appellate Tribunal, within whose jurisdiction the appellate matter falls or the appellant may send the memorandum by the registered post addressed to such Registrar. An appeal that has been sent by mode of post shall be deemed to have been presented to the Registrar on the day on which it is received in the office of the Registrar.

The appeal shall be presented in four sets in a paperbook along with an empty file size envelope bearing full address of the respondent and where the number of respondents are more than one, the sufficient number of extra paperbooks together with empty file size envelopes bearing full address of each respondent shall be furnished by the appellant. Where the appellant is a bank or a financial institution, in that case memorandum of appeal may be preferred:

(a) by one or more legal practitioners which such bank or financial institution has permitted to appear on its behalf;

or

(b) by any of the officers of such bank or financial institution to act as presenting officers;

and every person who is so authorised by the institutions may present the appeal before the Appellate Tribunal. Where the appellant is other than a bank or a financial institution, he has the option to prefer an appeal in person or by his agent or by a duly authorised legal practitioner[73].Contents of Memorandum of Appeal.--Every memorandum of appeal shall concisely streamline the appeal under distinct heads elaborating the grounds of such appeal without adducing any argument or narrative, and such grounds shall be numbered

[72] Section 20(3) of the Recovery of Debts Due to Banks and Financial Institution Act, 1993.
[73] Rule 5(2),(3), Debts Recovery Appellate Tribunal (Procedure)Rules, 1994

in sequence and shall be typed with double line space on one side of the paper. there shall not be need to present separate memorandum of appeal to seek interim order or direction, if in the memorandum of appeal, the same is prayed for by the appellant[74].

Plural Remedies - A memorandum of appeal shall not attempt to seek relief or reliefs relying on more than a single cause of action in one single memorandum of appeal unless the reliefs for are consequential to one another[75].

Documents to accompany Memorandum of Appeal.

Every memorandum of appeal shall be submitted in three copies and shall be accompanied with two copies (of which at least one should be a certified copy) of the order pronounced by the Presiding Officer of Debts Recovery Tribunal or order made by the Recovery Officer, as the case may be, against which the appeal has been preffered. Where the parties to the appeal are being represented by an agent, he must produce a documents indicating that he has been duly authorized for the task as an agent, and the authority letter should also be appended to the appeal:

Provided that where an appeal is filed by a legal practitioner, a duly executed vakalatnama should also be accompanied with the appeal

Where a bank or financial institution is being represented by any of its officers who is acting as a presenting officer before the Appellate Tribunal, his appearance should be supported by a document authorising him to act as the presenting officer, and that document of authority should be appended to the memorandum of appeal[76]. Endorsing copy of appeal to the respondents.- As soon as the memorandum of appeal is filed before the Registrar a copy of it and the paper book shall be served on each of the respondents, by registered post[77].

[74] Rule 10, Debts Recovery Appellate Tribunal (Procedure)Rules, 1994
[75] Rule 12, Debts Recovery Appellate Tribunal (Procedure)Rules, 1994
[76] Rule 11, Debts Recovery Appellate Tribunal (Procedure)Rules, 1994
[77] Rule 13, Debts Recovery Appellate Tribunal (Procedure)Rules, 1994

Fee Payable-

Every memorandum of appeal shall be accompanied with a fee as given below and such fee may be remitted either in the form of crossed demand draft on a nationalised bank in the name of the Registrar and payable at the station where the Registrar's office is situated or it can also be remitted through a crossed Indian Postal Order drawn in the name of the Registrar and payable in Central Post Office of the station where the Appellate Tribunal is located.

The amount of fee payable in respect of appeal shall be as follows:

Amount of debt	**Amount of fees**
1. Less than Rs. 10 lakhs	Rs.12000
2. Rs. 10 lakhs or more but less than Rs. 30	Rs. 20,000
3. Rs. 30 lakhs or more	Rs. 30,000

Filing of reply by the Respondents-

The Respondent required to file four complete sets of documents containing the reply countering the appeal along with documents in a paper book form, with the Registry within a period of one month of the service of the notice on him informing the filing of the memorandum of appeal.

The respondent is also required under the law to furnish one copy of the reply to the appeal along with the supporting documents, to the appellant.

The Appellate Tribunal may, in its discretion on application by the respondent, allow the filing of reply after the expiry of the prescribed period of one month[78].

Appellate Tribunal after the receipt of an appeal pass an order after giving the parties an opportunity of hearing, the Appellate Tribunal may, after giving the parties to the appeal,

[78] Rule 14, Debts Recovery Appellate Tribunal (Procedure)Rules, 1994

an opportunity of being heard, pass such orders thereon as it thinks fit, which may amount to modifying or setting aside the order appealed against[79].

Opportunity of being heard to the parties:

The Appellate Tribunal is required to give an equal opportunity of hearing to both the parties to the dispute. The Appellate Tribunal shall notify both the parties about the date and place of hearing of the appeal in such a manner as the Presiding Officer may by general or special order direct.

In **Kowa Spinning Ltd. v. Debt Recovery Tribunal**[80], a Full Bench of the Madhya Pradesh High Court rejected a challenge to Regulations 31 and 32 of the Debt Recovery Tribunal Regulations of Practice, 1998 and held that the said regulations are intra vires. If a case is made out for cross-examination of the deponent under Regulation 32, the Tribunal shall order the attendance of the deponent who has sworn to an affidavit.

Order by the Appellate Tribunal:

The Appellate Tribunal may pass an order as it thinks fit, it may either confirm, modify or set aside the order which is being appealed. Every order of the Appellate Tribunal shall be in writing and shall bear the sign along with the date of the Presiding Officer of the Appellate Tribunal. The order shall be pronounced in open Court.

The Appellate Tribunal shall send a copy of every order made by it to the concerned parties to the appeal and to the concerned Tribunal. The orders of the Appellate Tribunal shall be communicated to the appellant and to the Respondent and to the Tribunal concerned either in person or by registered post free of cost.

The orders passed by the Appellate Tribunal which are deemed fit for publication in any authoritative report of the press may be released for such publication, on such terms and conditions as the Appellate Tribunal may lay down[81].

[79] Section 20(4) of the Recovery of Debt Due to Banks and Financial Institutions,1993 (Act 51 of 1993).
[80] (2005) 123 Comp. Cas 677
[81] Rules 18,19,20, Debts Recovery Appellate Tribunal (Procedure)Rules, 1994

Inherent powers of Appellate Tribunal

The Appellate Tribunal may make such orders or give such directions, as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice[82].

Expeditious disposal of appeal by Appellate Tribunal:

The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally Within six months from the date of receipt of the appeal[83].

Compromise of suit:

While the suit was pending, both the contesting parties decided to enter into a memorandum of understanding, in which they had struck a compromise, elucidating that the parties were to adhere to the conditions stipulated by taking the following actions: (a) the respondents will withdraw the suit filed by them against the appellant,"(b) they were to pay the guarantee liability of Rs. 2.33 lakhs; and (c) they were to file a compromise petition in pursuance of the memorandum of understanding before the appropriate Court. Undisputedly, the respondents faild to comply with the conditions and did not withdraw the suit filed by them against the appellant Bank nor did they ever paid the guarantee liability of Rs. 2.33 lakhs. Also, no compromise petition was moved before the appropriate authority. The bank thereupon made an additional claim under the original terms. The Debt Recovery Appellate Tribunal dismissed the appellant-bank's contention holding that the bank was precluded from claiming any higher rate of interest or claiming interest from the date of the claim case in view of the terms of the memorandum of understanding and reversing the decision of the Tribunal below allowing the bank's claim for repayment of further sum of Rs. 12.75 lakhs. On appeal to the Supreme Court ,against the order of appeal, the Apex Court held that by no stretch of imagination could it be rationally concluded that the terms and conditions stipulated in the memorandum of

[82] Rule 22, Debts Recovery Appellate Tribunal (Procedure)Rules, 1994

[83] Section 20(6) of the Recovery of Debt Due to Banks and Financial Institutions,1993 (Act 51 of 1993).

understanding had been abided by or acted upon by the parties. Subsequent to the signing of the memorandum of understanding there was also a lot of correspondence between the disputing parties which would reveal that the parties failed to arrive at a consensus even over the terms of the memorandum of understanding. Thus, there was no concluded contract nor was there any novation. No compromise petition was also filed in an appropriate Court in terms of Order XXIII, rule 3 of the Civil Procedure Code. Given the fact that There had been non-compliance with the terms and conditions of the memorandum of understanding by the respondents , hence, a party in breach of contract could not seek its enforcement. Therefore, the memorandum of understanding did not amount to novation of contract as envisaged under section 62 of the Indian Contract Act. The order of the Debt Recovery Appellate Tribunal was to be set aside and that of the Debt Recovery Tribunal restored.

Deposit of amount of debt due, on filing appeal:

Where an appeal is preferred by any person who has failed to discharge his debt to a bank or financial institution, such appeal shall not be entertained by the Appellate authority, unless such person has deposits an amount equivalent to seventy five per cent of the amount of debt which is due from him, as determined by the Tribunal, with the appellate tribunal:
Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or decrease the amount to be deposited[84].

Section 21, which requires deposit, of seventy-five per cent in a manner provides in the preceding paragraph. of the amount of the debt due and rule 8(2) of the Debt Recovery Appellate Tribunal (Procedure) Rules, 1994, which requires Court-fees to be paid, would apply to appeals not only against orders adjudicating the amount due but also against subsequent orders[85].

The purpose of imposing a condition of making the deposit before filing an appeal under the Act is not to debar a litigant from filing an appeal but only to safeguard the interest of

[84] Section 21, Recovery of Debts of Due to Banks and Financial Institutions Act,1993
[85] Maharaji Educational Trust v. Punjab and Sind Bank,(2006) 3 Bankers'J51(53)(All)

the party securing the order has been passed by the Tribunal. The condition of making 75% deposit along with the appeal may have been provided under section 21 of the Act, but the proviso to the said section gives discretion to the Appellate Authority to waive such condition. The said discretion has to be exercised judiciously, after considering the facts of the particular case[86].

In Jagannath Dudadhar v. Commissioner of Sales Tax[87], the following observations were made:

The statute confers on the person aggrieved a right to appeal. But, while granting such a right, the Legislature is competent to circumscribe it by imposing certain conditions. Section 43(5) of the Act provides that no appeal against an order of assessment, etc., shall be entertained by an Appellate Authority unless such appeal is accompanied by a satisfactory proof of the payment of tax, etc. However, under proviso to the sub-section (5), a discretion is conferred on the Appellate Authority to entertain the appeal without payment of tax, etc., if it thinks fit, for the reasons to be recorded in writing, on the appellants furnishing security of proof of payment of a smaller amount as the Appellate Authority may direct. It is trite that while dealing with the application for waiver of the condition of the pre-deposit, the authority concerned is not required to embark upon a detailed inquiry to find out whether the stand of the appellant is correct or not. What is required to be seen is whether: (a) there is a prima facie case supporting the cause of the appellant for grant of full stay; (b) the balance of convenience qua deposit or otherwise; and (c) irreparable loss, if any, would be caused to the appellant in case stay is not granted. While imposing any condition for pre-deposit, it is also to be borne in mind that this provision has been made to counter the dilatory tactics resorted by the bogus litigants. The Act was enacted with the primary object of providing for expeditious adjudication and RDDBFI and this provision is in conformity with the basic object of the Act. Such provisions are found in various statutes which deal with the recovery of public

[86] (2004) 136 STC 235
[87](2004) 136 STC 235

dues. Similar provisions have been made under the Income Tax Act, 1961 and the various enactments relating to recovery of sales tax. The provision empowered the Appellate Tribunal to waive or reduce the amount to be deposited, if good cause is shown. Consequently it is open to a party to make a prayer for the waiver or the reduction of the amount to be deposited. The Appellate Tribunal has the power to extend the time for deposit of the amount in question.

In **Asif Alim Sait v. Syndicate Bank**[88], the Debt Recovery Appellate Tribunal observed that pre-deposit of seventy-five per cent. of the amount, as determined by the Debt Recovery Tribunal, under section 21 of the RDDBFI Act, 1993, is the rule and any deviation there from is an exception. The Chairperson of the Appellate Tribunal has discretion either to waive or reduce the pre-deposit amount. However, the exercise of discretion must be for good reasons. in the instant case, nothing was produced to support the contention of the appellants that they had absolutely no source of income, that they had to support their respective families and they found it very difficult to make both ends meet. The appellants had not tendered any document with respect to their income. in the counter-affidavit filed by the bank, it was stated that the first appellant was the proprietor of three firms whose total turnover was Rs. 3.5 crores, and the second appellant was employed as sales executive with a firm drawing a salary of Rs. 25,000 per month. Not only was no affidavit filed but orally also these facts were not denied by the appellants' counsel. The submissions of the bank were to be accepted as uncontroverted. Further an order under section 21 had already been passed by the Appellate Tribunal by consent and the appellants were directed to deposit with the bank Rs. 15 lakhs but inadvertently it was not mentioned that the order was by consent and reasons were not given. The appellants took advantage of this fact and challenged the order before the High Court on the ground that it was without reasons. However, the High Court set aside the order of the Appellate Tribunal directing it to hear the application afresh. Accordingly, the Appellate Tribunal considered the application afresh. Taking into consideration the facts of the case, the Appellate Tribunal ordered that the appellants were not entitled to any waiver or reduction of the pre-deposit amount.

[88] (2005) 1 BC 123 (DRAT- Chen)

.In **K. Janardhan Pillai v. Indian Overseas Bank**[89],along with the appeal filed before the Debt Recovery Appellate Tribunal by the appellants who were guarantors for loans advanced by the respondent-bank to different companies, they filed a petition for waiver of pre-deposit under section 21 of the RDDBFI Act, 1993, and on the petition, an order for the deposit of 60 per cent. of the amount due to the respondent-bank was passed. In a writ petition filed under Article 226 of the Constitution, the appellants contended that the discretionary power of the Appellate Tribunal was not duly exercised. However, the petition was dismissed. On appeal, the Division Bench of the Kerala High Court observed that the discretion conferred on the Debt Recovery Appellate Tribunal under the provisions of section 21 of the RDDBFI Act, 1993, has to be exercised in a judicial manner and the exercise of discretion must be for good reasons. Dismissing the appeal, the Bench held that even after finding that the appellants had, in collusion with the bank officers, managed to evade the repayment for more than a decade, the Appellate Tribunal, instead of rejecting the petition, had granted partial relief and permitted the appellants to file the appeal on deposit of 60 per cent. of the total amount. Therefore, the exercise of discretion was not arbitrary. The Bench further held that the contention of the appellants that adequate securities had been provided for the dues to the respondent-bank was not tenable as the respondent-bank, despite the securities, had not been able to recover a penny and the delay was against public interest.

Proceedings before Tribunal or Appellate Tribunal deemed to be judicial proceeding-

Any proceedings invoking the jurisdiction of the Tribunal or the Appellate Tribunal shall be regarded as a judicial proceeding within the ambit of sections 193 and 228, further also for the purposes of section 196 of the Indian Penal Code, and the Tribunal or Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the C.P.C, 1973.

[89] (2003) 115 Comp. Cas 64 (Ker) (DB)

The Debt Recovery Appellate Tribunal in **Anil Kumar Gupta v. Bank of Baroda**[90] allowed an appeal to set aside an ex parte final order passed by the Tribunal against the defendants. The defendants had filed and application before the Presiding Officer to set aside the ex parte final order along with an application under section 5 of the Limitation Act for excusing the delay in filing the above application. The Tribunal dismissed the application holding that there was delay and the defendant intentionally avoided service of the summons. On appeal, the Appellate Tribunal while setting aside the order of the Tribunal holding that even if the information regarding registered notice had been mentioned to someone at the residence of the appellant, this did not amount to avoidance of service if the appellant did not go and collect the notice from the post office. The postman was not examined to show the person who was informed about the registered notice from the Tribunal. No evidence was available that the appellant was aware of the notice and deliberately avoided service. There was no valid ground for ordering publication of the notice in the newspaper and such publication could not be said to be a valid service. In the absence of any evidence that the delay in filing the application was caused due to any mala fide reason or was intended to protract the proceedings, the delay had to be condoned. The Appellate Tribunal, therefore, allowed the appeal and the appellant was given an opportunity to have the case decided on merits.

Section 193 of the Indian Penal Code provides the punishment for false evidence. Section 196 provides about the use of evidence which can be safely termed as false, whereas section 228 of the Code defines the offence of intentionally insulting or interrupting a public servant sitting in judicial capacity and prescribes punishment for the same.

The Tribunal and the Appellate Tribunal are deemed to be Civil Court for the purpose of section 195 and Chapter XXVI of Cr. P.C. Section 195 deals with the prosecution of any person who stands in contempt of lawful authority of public servants for offences against public justice and for all those offences relating to false documents given in evidence. Therefore whenever there is a contempt of the tribunal, section 195, Cr.P.C. will apply.

[90] (2005) 123 Comp.Cas.773

CHAPTER-4

REMEDIES UNDER OTHER ACTS

4.1 Remedies under SICA and RDB Act,1993

The bank obtained an order for stay of proceedings till consent of the BIFR. There is a non obstante clause both in SICA and RDB Act. The court said that the RDB Act and SICA are not competing with each other as RDB Act saves SICA. By the amendment of SlCA in 1994, a provision was made in Section 22 for stay of suits, and the RDB Act is of 1993. A part of the impugned order rejecting prayer of the appellant for stay of proceedings against him was set aside. It was directed that till consent of BIFR was obtained, the proceedings before or proceedings before BIFR were terminated, proceedings against the company were to remain stayed[91].

The apex court in a case held that Appellants, who are the guarantors, can obtain the protection of Section 22(1) of SICA only if the action taken by the banks falls in the category of the term 'suit'. If the action taken by the bank as respondents is in the nature of 'proceedings' and not a 'suit', protection under Section 22(1) would not be available to a person, specially, when that person/appellant is are guarantors.

The Court, in **KSL. and Industries Limited Case** took the view that even though both the statutes SICA and RDB Act contain a non-obstante clause,depite being conflicting in nature, still in case of conflict [RDB Act, 1993 will prevail over SICA, as far as the matter relates to the recovery of public revenue. This Court also ruled in **Kailash Nath Agarwal and others** on the fact that the liability of surety or guarantor is co-extensive with those of the principal debtor in. **In Nahar Industrial Enterprises Limited[92]** ,this Court reiterated that the term 'suit' have to be read in the context of subsection (1) of Section 22 of SICA including those actions which are dealt with under the Code and not in the comprehensive over-arching proceedings so as to apply to any original proceedings

[91] D.A Dawood v.State of Bikaner,(2001) 2 BC 72(DRAT-Del)
[92] (2009) 8 SCC 646

before any legal forum. The term 'suit' would be applicable only to those proceedings instituted in civil court and not to the actions or recovery proceedings filed by banks and financial institutions before a tribunal such as DRT[93]. The same court, in another case took the view that even though both the. conflicting statutes SICA and RDB Act, 1993 contain a non-obstante clause, in case of conflict the RDB Act, 1993 will prevail over SICA, so far as public revenue recoveries are concerned."

RDDBFI Act shall be given priority and primacy over SICA Act. Proceedings of SICA shall have no effect upon the proceedings initiated under RDB Act.

The purpose of SICA and DRT Act is entirely different. As observed earlier, the objective of one is to provide for the measures for the reconstruction of sick companies, and the other aims to provide for speedy recovery of debts due to the banks and financial institutions. Both the Acts are "special" in this sense. However, when it comes to the reconstruction of sick companies, the SICA must be held to be a special law, though it may be considered to be a general law in relation to the recovery of debts. Whereas, the RDDBFI Act may be considered to be a special law in relation to the recovery of debts and the SICA may be considered to be a general law in this regard. For this purpose we rely on the decision in **LIC v. Vijay Bahadur Case**. Normally the latter of the two would prevail on the principle that the Legislature was aware that it had enacted the earlier Act and yet chose to enact the subsequent Act with a non-obstante clause. In this case, however, the express intention of the Parliament in the non-obstante clause of the RDDBFI Act does not permit us to take that view. Though the RDDBFI Act is the later enactment, Subsection (2) of Section 34 specifically provides that the provisions of the Act or the rules there under shall be in addition to, and not in derogation of, the other laws mentioned therein including SICA.

The term "not in derogation" clearly throws the light on the intention of the Parliament not to detract from or abrogate the provisions of SICA in any way. This, in effect must mean that Parliament intended the proceedings under SICA for reconstruction of a sick company to go on and if for that purpose it further intended that all other proceedings

[93] Indarjeet Arya v. ICICI Bank (2014) 2 SCC 229

against the company and its property should be stayed pending the process of reconstruction. While the term "proceedings" under Section 22 did not originally include the RDDBFI Act, which was not there in existence. Sec 22 covers proceedings under the RDDBFI Act.

The purpose of the two Acts is entirely different and where actions under the two may seem to be in conflict, Parliament has wisely preserved that the proceedings under Sub-section (2), which lays down that the later Act i.e. RDDBFI in addition to and not in derogation of the SICA. Thus OA against a sick industrial company shall not lie or proceeded with till the reference is pending before BIFR[94].

4.2 REMEDY UNDER SARFAESI ACT, 2002 & RDB ACT, 1993

Simultaneous resort to DRT Act, 1993 and SARFAESI Act, 2002

Withdrawal of the original application by the applicant that is pending before the Debts Recovery Tribunal (DRT) filed under the RDDBFI Act, 1993 (51 of 1993)] is not a pre-condition for adopting recourse under the SARFAESI Act, 2002. It is for the bank/Fl to exercise their choice to pursue a case in which it may apply for leave to withdraw cases and in which it may not do so. The object of the Securitisation Act or the SARFAESI Act, 2002 is to ensure quick realisation of security. Quick recovery is of utmost importance. This is a common object between the two Acts. But under the Securitisation or SARFAESI Act,the bank/FI has thenoption to assign security interest to the securitisation company which may also be called as an assets reconstruction company, unlike the provisions provided under the RDDBFI Act. If the borrower company fails to pay, it becomes a defaulter. If the company fails to fulfill its obligation of managing the assets properly so as to maintain their financial value and prevent the value of the asses from depreciating resulting in mismatch between asset and liability in the books of the Bank/Fl. The borrower is under an obligation not only to repay the debt, but he also

[94] Vinod Kothari, Tannan's-Banking Law and Practices in India,1503 (Lexis Nexis,Gurgaon,26Edn.)

undertakes to maintain the margin and value of securities so as to prevent mismatch, and failure to fulfill this obligation attracts the provisions of the twin Acts.

Doctrine of election of remedies

The doctrine of election comes into play only in those cases where three elements of election coexist, which are as follows, where there exist two or more remedies, existence of inconsistency between these remedies, and choice between any one of them. If any one of the three elements is missing, the doctrine would not come into play. The remedy provided under the Securitisation Act or the SARFAESI Act, 2002 is in addition to the those under the RDDBFI Act, RDDBFI Act or DRT Act ,1993.Together they constitute same remedy and therefore this doctrine does not apply.

Simultaneous action under RDB Act, 1993 and SARFAESI Act, 2002

Withdrawal of application pending before the Debts Recovery Tribunal (DRT) is not a pre-condition before approaching the SARFAESI Act, 2002. It is for the Bank or F1 to exercise its discretion as to cases in which it may apply for leave to withdraw. Therefore the appellant was entitled to proceed in accordance with the provisions of the SARFAESI Act, 2002 without withdrawal of the application pending before the DRT.79 Action against the borrower may simultaneously be taken under the SARFAESI Act, 2002.

For attachment of mortgaged property, enforcement of simultaneous proceedings under the RDB Act and the Securitisation or SARFAESI Act permissible. The requirement of law is only to issue notice under Section 13(2) of the Securitisation Act. The Act nowhere bars the bank from proceeding under the Securitisation or SARFAESI Act even if the original application is pending before the Debts Recovery Tribunal (DRT).

Permission of the Debts Recovery Tribunal (DRT) is not pre-requisite for a bank or F1 to invoke the provisions of Section 13 of the Securitisation or SARFAESI Act. Power has been conferred on the Tribunal (DRT) under Section 19(1) (c), third proviso of the RDB Act only to refuse or grant permission for withdrawal and not prevent a bank or financial institution from invoking provisions of the Securitisation or SARFAESI Act.

Jurisdiction of DRT under the SARFAESI Act, 2002

The respondents borrowed Rs. 2.95 crores from petitioner-bank in lieu of which certain property was mortgaged with the bank. Upon failed to repayment of the loan the bank issued notice under Section 13(2) of the SARFAESI Act, 2002. As the borrowers avoided the notice the bank took possession of the property as contemplated under Section 13(4) of the SARFAESI Act, 2002. The respondents initiated proceedings for declaring the notice served upon them by the bank under Section 13(2) of the SARFAESI Act, 2002 void, illegal and ultra vires and also for permanent injunction. The bank filed applications under Order VII, Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the plaint on the ground that under Section 34 of the SARFAESI Act, 2002, the Civil Court lacks jurisdiction to entertain the suit, which have been dismissed by the Trial Court. On revision petitions, the Madras High Court, allowing the petitions, held that the bank had issued notice under Section 13(2) of the SARFAESI Act, 2002 because the respondents had defaulted in payment of the loan and applied for remedy provided under Section 13(4) of the SARFAESI Act, 2002, by taking over the possession of the secured assets of the borrower, which also included his right to transfer the same by way of lease, assignment or sale for realizing the value of the secured asset. To escape from the action contemplated under Section 13(4) of the SARFAESI Act, 2002, the respondents had filed the suit and the same is not maintainable under Section 34 of the Securitization Act or the SARFAESI Act. 2002 because the civil court had no jurisdiction to entertain them. The only appropriate forum which was entitled to entertain the said suits under the Securitization Act or the SARFAESI Act, 2002 was the Debts Recovery Tribunal (DRT). The order passed by the trial court was set aside[95].

Bank entered into an agreement with 2 persons who had never acquired any title in respect of the Suit property from the lawful owners. Thereafter the bank exercised power under Section 13(4) to forcibly dispossess the lawful owners. Held that bank had no authority to exercise power under Section 13(4).

[95] Bank of India v. Manickam C Sellakumarasamy,(2007) 137 Comp. Cas. 330 (Mad)

By introducing amended provisions of Section 17(1) of the SARFAESI Act, 2002 and by laying down the fees in respect of applications to the Debts Recovery Tribunal (DRT), the Central Government has impliedly specified that the provisions of the DRT Act, 1993, which shall also apply to debts less than Rs.10 lakhs. The borrowers are free to avail the alternative remedy of filing appeal under Section 17 of the SARFAESI Act, 2002. Writ petition was not maintainable[96].

4.3 CONNFLICT BETWEEN CIVIL PROCEDURE CODE AND DEBT RECOVERY TRIBUNAL

Bar of jurisdiction of Civil Court

Where the amount of claim exceeds 10 lakh rupees, the jurisdiction of the civil court became barred. Where RDB Act, 1993 applies according to which the Debts Recovery Tribunal (DRT) has exclusive jurisdiction in respect of debts over Rs. 10 lakhs, the Civil Court hm no jurisdiction. The exparte decree of a civil court was set aside.

However, where Civil Suit when filed and continued was for recovery of a sum below prescribed limit of Rs. 10 lakhs and the decree passed by the Civil Court is for sum exceeding Rs. 10 lakhs due to pendente lite interest decree by Civil Court was valid.30

The RDB or the DRT Act, 1993 is applicable by virtue of Section I, if the debt due to any bank is Rs. 10 lakhs or more. If the debt is less than Rs. 10 lakhs, then common law Com is the Forum. Further, the amount of debt due on the date of the suit in the common law Court or application before the DRT is the criterion. Merely because the amount was less than Rs 10 lakhs as on the date of filing of the suit in the Civil Court, but with interest, it smelled to the figure of more than Rs. 10 lakhs at the time of decree or thereafter, the Civil Court will not lose jurisdicstion."

[96] Gauri Shankar Prasad v. Chief Manager ,State Bank of India. AIR 2009 Jhar. 47

In **Punjab National Bank v. Chajju Ram**[97], Where the decretal amount of the suit as per the final decree passed by the Civil Court , was above Rs. 10 lakhs,i.e, inclusive of interest from the date of filing of the suit till recovery .The execution poroceedings for the decree exceeding Rs.10 lakhs would be maintained by the Tribunal (DRT) only and not by the Civil Court on the ground that the decree was for less than Rs.10 lakhs at the initial stage.

Summary procedure is the best option to recover the money through a recovery suit for the cases qualifying to file suit under order xxxviii. The Plaintiff has to pay court fee as prescribed in law.

The advantages of Summary suit are:

a) The Suit will be decreed within a short period
b) The Scope of Defendant to defend the case is less
c) Normally the Defendant will not get leave to defend
d) If the Defendant permitted to defend, the court may direct him to deposit part of the amount as security deposit.
e) If the defendant admitted part of the amount claimed by the Plaintiff, no leave to defend is
f) If the Defendant do not pay decreed amount the Plaintiff can approach the Court for Execution Proceedings.

Where to file a Summary Suit under Order XXXVII

A Summary Suit for recovery of money can be filed in High Court, City Civil Courts and Courts of small causes and other courts. The High Court may, by notification in the official gazette, restrict the operation of the other courts only to such categories of suits as it deems proper, and may also from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge

[97] AIR 2000 SC 2671

or vary, the categories of suits to be brought under the operation of this order as deems proper.

Suits, which can be filed under Order XXXVII C.P.C 37

(a) Suits upon bills of exchange, hundies and promissory notes.

(b) Suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising:-

(i) on a Written contract ; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of debt or liquidated demand only

(iv) suit for recovery of receivable instituted by any assignment of a receivable.

How to Institute a Summary suit and what are the contents

A Suit to which order 37 applies may, if the plaintiff decides to proceed hereunder, be instituted by presenting a plaint which shall contain:-

(a) a specific averment maintaining that the suit is filed under the order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely:-

"(Under Order XXXVII of the Code of Civil Procedure, 1908)"

As per order XXXVII 2(3) of the Cover of Civil Procedure the defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and if he fails to appear the allegations in the plaint shall be deemed to be admitted and the Plaintiff shall be entitled to a decree for any sum, however that amount shall not exceed the sum mentioned in the summons itself, together with interest at the rate specified, if any, upto the date of the decree and such sum for costs as may be determined by the High Court from time to time by rule made in that behalf and such decree may be executed forthwith.

What is the procedure for appearance of defendant in Summary suit under order XXXVII

The Plaintiff shall, along with the summons under the rule 2, serve on the defendant a copy of the Plaint containing all the annexure thereto and the defendant may, at any time within 10 days of receiving the service decide to make appearance either in person or through an advocate and, in either case, he shall file in Court and address for service of notices on him.

As per order XXXVII Rule 3(2) unless otherwise ordered, all summons, notices and other judicial process, which are required to be served on the defendant, shall be deemed to have been duly served if they are delivered at the address given by him for such service. Rule 3(3) further says that on the day of making an appearance, the information of such service shall be provided by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, the plaintiff himself, either by notice delivered at or sent by the prepaid letter directed to the address of the plaintiff's pleader or the plaintiff, as the case may be.

Summons for Judgment in Form No. 4-A

As per Rule 3(4) if the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4-A or in such other form as may be prescribed from time to time, returnable not less than 10 days from the date

of service supported by and affidavit verifying because of action and amount claimed and stating that in his belief there is no defence to the suit.

Defending Summons for Judgment by Defendant

As per Rule 3(5) the defendant may, at any time within a period 10 days from the date of the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient entitling him to defend himself, apply for leave on the receipt of such summons defend such suit, and that leave to defend may be given to him either conditionally or upon such terms as may appear to the Court or Judge to be just.

Provided that leave to defend shall not be refused by the Court unless it is satisfied that the facts disclosed by the defendants do not indicate that he has a substantial grounds for defence or that the defence intended to be put up by the attendant is frivolous or vexatious.

Provided further that, where part of the amount claimed by the plaintiff is due to the defendant and the same has been admitted by him, leave to defend the suit shall not be granted to the defendent unless the amount so admitted to be due is deposited by him in the court.

Hearing of Summons for Judgment in the Court (Order XXXVII Rule 3(6)

When such summons are heard for Judgment -

As per Rule 3(6)(a) where the defendant has failed to apply for leave to defend, or where the application having been made but it was refused, the plaintiff shall be entitled to judgment forthwith; or

As per Rule 3(6)(b) if the defendant is allowed to defend the claim as a whole or any part of it, the Court or Judge may direct the defendant to furnish such security and within such time frame as may be fixed and that, on failure to furnish such security within the prescribed time period given by the Court or Judge or to perform such other

instructions as may have been given by the Court or Judge, the plaintiff shall be entitled to get the judgment forthwith.

Rule 3(7) says that the Court or Judge may, for substantial reasons disclosed by the defendant, which caused the delay for the defendant in entering an appearance or in applying for leave to defend the suit, grant him the leave

Power to order bill, etc., to be deposited with officer of Court

As per Order XXXVII Rule 5 in any proceeding under this Order the Court may order the bill, hundi or note on which the suit is found to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Order XXXVII Rule 6 Recovery of cost of noting non acceptance of dishonored bill or note

The holder of every dishonored bill of exchange or promissory note shall be entitled to the same remedies for the recovery of the expenses incurred which he can avail for non-acceptance or non-payment, or otherwise, by reason of such dishonor, as he has under this Order for the recovery of the amount of such bill or note.

Order XXXVII Rule 7 Procedure in suits

As per Rule 7 save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner

4.4 Other Alternative remedy.-

The RDDBFI Act, 1993, has been enacted with idea to create special procedure enabling the banks and the financial institutions to recover their debts due . the act provides for an order of appeal, namely, filing an appeal under section 20 and this fast-track procedure cannot be allowed to be by passed, either by resorting to the writ jurisdiction of the high court under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred In law. Even though the express provision under any law cannot oust

the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, in presence of an alternative remedy, judicial prudence demands that the High Court's refrain from exercising their jurisdiction under the constitution.

A recovery order is appealable under section 30. Where the petitioners had not filed any appeal under section 30 and had rushed to the High Court, it was held that the petitioners had an alternative remedy of filing of appeal under section 30 against the recovery order. The petition was consequently dismissed on the premise of alternative remedy. Ordinarily, the High Court shall refuse to interfere until the party aggrieved by the order has exhausted the statutory remedy available, if any. The rule is of policy, convenience and discretion rather than a rule of law. If the authority acts without jurisdiction or ignore principles of natural justice or fair play, the High Court would be competent to exercise its powers even if remedy of appeal was open and the aggrieved party did not avail of it. If the alternative statutory remedy is onerous or is not equally efficacious, the High Court may examine the validity of acts done by the authority notwithstanding the alternative remedy. The question is one of discretion and not of jurisdiction. in a case where the question of infringement of fundamental rights is raised, the High Court may in a suitable case investigate into the case in order to give appropriate relief in Super Shine Abrasives (P.) Ltd. v. Debts Recovery Tribunal, the Andhra Pradesh High Court held that it is no doubt true that when an effective alternative remedy is available, normally the extraordinary constitutional remedies under Articles 226 and 227 of the Constitution of India cannot be resorted to. But it is equally well settled that when an order is pronounced in violation of the principles of natural justice, the effective alternative remedy will not operate as a bar while exercising the jurisdiction under Article 227 of the Constitution of lndia.

In **Bharat Beedi Works Ltd. v. Kunhambu K**.[98], at the behest of the first respondent, the fifth respondent-bank issued bank guarantees to three different financiers in order to purchase timber. The second respondent, owner of certain property, stood as guarantor to the first respondent. The financiers invoked the bank guarantees but did not ensure supply

[98] (2003) 115 Comp. Cas. 676 (Kant) (DB)

of timber, which made the first respondent liable to pay the entire amount covered by the guarantees. On failure of payment, the bank initiated recovery proceedings by filing a suit against the first respondent, which was decreed in favour of the bank, and the execution proceedings taken by the bank were transferred to the Debt Recovery Tribunal which passed an order on May 8, 1998. Steps were also taken in terms of the Second Schedule to the income-tax Act, 1961, to recover the entire amount by sale of the property. An auction was held in which the property was delivered to the appellant who was the highest bidder. On invoking the writ jurisdiction by the first and second respondents, the Single Judge set aside the public auction and quashed the confirmation of sale of property made in favour of the auction-purchaser with directions to deliver the possession of the property back to the second respondent. On appeal, a Division Bench of the Karnataka High Court, allowing the appeal, held that the respondents had an alternative remedy under rule 60(1) of the Second Schedule to the Income-tax Act by filing an application to have the sale of immovable property set aside on deposit. An application to have the sale of immovable property on the ground of non-service of notice or material irregularity in publishing or conducting the sale was provided for under rule 61 of the Second Schedule to the Income-tax Act. One could avail of the remedy under section 30 of the RDDBFI Act, 1993, by filing an appeal against the order of the Recovery Officer before the Tribunal section 20 of the RDDBFI Act, 1993 provides for a further appeal against the order of the Tribunal before the Appellate Tribunal. The writ petition was, therefore, not maintainable. Even though the High Court had wide powers, in the absence of any material, it was not proper to invoke the extraordinary writ jurisdiction when an alternative remedy of appeal was available. The order of the single Judge and the direction to the appellant to deliver the property to the second respondent was not sustainable and was liable to be set aside. Accordingly, the decision of the single Judge was set aside.

In **M.G. Dying Works v. Central Bank of India**[99], the Debt Recovery Tribunal determined the amount that the petitioner had to pay the respondent-bank. In the instant writ petition, the petitioner submitted that although it was not aggrieved with the amount

[99] (2004) 54 SCL 127 (CLP)(Raj)

determined by the Debt Recovery Tribunal, yet while considering the determination of interest, the Debt Recovery Tribunal ignored the Reserve Bank guidelines. The Rajasthan High Court held that the petitioner should have raised the question before the Appellate Tribunal itself as to the amount of interest payable by the petitioner to the respondent-bank and if it had failed to do so, it could not be permitted to raise the said question in a writ petition. The petitioner should have filed an appeal against the order of the Debt Recovery Tribunal as it was difficult to understand how the petitioner could have it both ways as on the one hand it was submitted by the petitioner that it was not aggrieved with the amount determined by the Debt Recovery Tribunal and simultaneously also submitting that the Guidelines provided by the Reserve Bank of India had not been followed by the Debt Recovery Tribunal. It was obvious that the petitioner could raise the question before the Appellate Tribunal itself in that regard. Insofar as the High Court was concerned, it could not entertain the instant writ petition as the petitioner had not exhausted all the remedies that were available to it including appeal before the Appellate Tribunal against the order of the Debt Recovery Tribunal. The writ petition was, therefore, dismissed as not maintainable.

In **Jekay Rolling Mill (P.) Ltd. v. Debts Recovery Tribunal**[100], the petitioner preffered a writ petition under Article 227 of the Constitution challenging an order of proclamation of sale issued under the signature of the Recovery Officer, Debt Recovery Tribunal and impleaded the Tribunal as the opposite party in the said application. It was held that the Tribunal had been impleaded as the opposite party unnecessarily and, therefore, the Tribunal was deleted from the cause title of the revisional application. It was further held that under section 30, as amended by the Amendment Act, 2000, any person aggrieved by the decision taken by the Recovery Officer under the Act has a right to prefer an appeal to the Tribunal. Therefore, the petitioner had an alternative efficacious remedy before the Tribunal itself. In view of this, the petition under Article 227 constitution) entertained and, therefore, the same was rejected.

[100] (2004) 54 SCL 133 (CLP)(Cal)

In **United Commercial Bank v. Dev Raj Case**[101], a decree was passed in the year 1993 by the Civil Court in favour of the petitioner-bank to be recovered from the respondent. On an execution moved by the bank before the Civil Court, the respondent raised an objection that the jurisdiction to entertain the execution petition lay with the Debt Recovery Tribunal and not with the Civil Court. It was held that all the pending suits or applications/ proceedings including execution petitions based on a cause of action which if accrued after the institutionalization of the Debts Recovery Tribunal would have fallen within the jurisdiction of the Tribunal, would stand transferred to the Tribunal in pursuance section 31 of the RDDBFI Act, 1993. Merely because the execution petition was filed in a suit which was decreed before the establishment of the Tribunal, that would not exclude the jurisdiction of the Tribunal from entertaining the petition it would be contrary to the intention and commission of the Act if a different view were to be taken. The amount sought to be recovered was more than Rs. 10 lakhs and the Debt Recovery Tribunal alone would have the jurisdiction to entertain the petition. The execution petition was transferred to the Debt Recovery Tribunal.

In **Punjab and Sind Bank v. Rama Minerals and Chemicals Case**[102]**,** the respondent-bank tiled a suit for recovery of debt by sale at the immovable property mortgaged and the suit was decreed ex parte. The applicant, in, defendant No. 6, filed an application to have the ex parte decree set aside contending that he was not send summons or notices and he learned about the decree only on receipt of the recovery notice after execution proceedings were initiated, that he did not have knowledge of the suit, that he did not execute any document, and that tincture. the decree should be set aside. The respondent-bank raised a objection that as the decree to be executed was above Rs. 50 lakhs, the application for setting aside the ex parte decree was not maintainable in the sum and could be moved only before the Debt Recovery Tribunal (under the RDDBFI Act, 1993. The Delhi High Court, dismissing the application, held that the decretal amount being a debt as envisaged under section 2 (g) of the RDDBFI Act, 1993, would fall under

[101] (2004) 122 Comp. Cas. 568 (HP)
[102] (2003) 115 Comp. Cas. 883

sections 17 and 18 of the Act, which gave exclusive powers to try such cases to the Debt Recovery Tribunal under the Act. By virtue of section 31 of the RDDBFI Act, 1993, even execution proceedings pending in the Civil Court when the Act came into force would stand transferred to the Debt Recovery Tribunal if the amount for which the execution application was filed was over Rs. 10 lakhs. Suits originally instituted in the High Court or transferred to it stand transferred to the Tribunal by operation of section 31 of the Act. Admittedly, the decree sought to be executed was above Rs. 50 lakhs and. the suit and proceedings therefrom stood transferred to the Debt Recovery Tribunal constituted under the Act by operation of section 31 of the Act. Therefore, the application for setting aside the ex parte decree or any other previous order passed during the trial could be moved only before the Debt Recovery Tribunal. The valuation of the suit should be seen at the time of filing of the suit and it subsequently the amount exceeds Rs. 10 lakh, the civil Court would not lose jurisdiction over the matter.

In **Sneha industries v. State Bank of Hyderabad**[103], the bank filed a suit for recovery of Rs. 8,35,59072 The loan being a secured "the a preliminary decree was passed by the civil Court on 14th July, 1997 suit amount with 17.75% interest from June 5, 1995 it". The date at which suit to the date of the decree. As the amount has not been paid, final decree proceedings under Order xxxiv, Rule 5 of the Civil Procedure Code were initiated by the bank for the recovery of the amount by sale of the properties. By the time the final decree proceedings were initiated, the amount swelled to Rs. it 98099.72. The same was returned by the Civil Court on the ground that the debt extruded Rs. t0 lathe. The order became final. as neither the bank nor the petitioners challenged the same. The bank tiled application before the Tribunal, which had entertained the same. The petitioner filed writ petition conflicting that the original debt claimed in the civil suit being less than 10 lakh, the application before the Tribunal was not maintainable. The High Court held that there cannot be any exception to this contention. But neither the petitioners nor the bank had challenged the said order returning the petition fix final decree proceedings and as such, the petitioners have to blame themselves. As the bank B concerned, the same had

[103] (1999) 2 BC 695 (AP-DB)

accepted the order of the Court lean-rims the final decree proceedings and had chosen to file application before the Tribunal. But it cannot have the decree as a matter of course from the Tribunal. It has to undergo the full course of the trial as if application is a fresh case matted. However the Court observed that the proceedings before the Tribunal do not suffer from lack of jurisdiction, as the application before the Tribunal has to be tried as a fresh proceeding. The decree of the Civil Court can wily be taken as a bass for jurisdictional purposes as the word "debt" defined a dense (g) of section 2 of the Act takes, not only the original amount due from any person to a bank or financial institution, secured or otherwise, but also the amount to be paid under a decree or order of any Civil Court. The Court observed that as the amount is recoverable on account of the decree of the Civil Court and the amount being more than Rs. 10 lakhs, it is a debt within the meaning of season 2(3) of the Act and as such the Tribunal has jurisdiction to entertain the same. in Punjab National Bank v. Chajju Ram, the Supreme Court held the following: 'The words cause at action (in section 31) are ruled by the words 'being a suit or proceeding. Section 31 anticipates not only the trawler of a suit but also trawler of a proceeding which may be other than a suit, hire an execution application. Understanding in this context, the words 'being a suit or proceeding the cause of action when-on it is based .....' would mean that in the case of an execution application if the decree is for execution being filed before the Tribunal." Thus, the Supreme Court has held mat the amount claimed in the execution application also falls within the words "cause of action" made mention in section 31.

CHAPTER-5

JUDICIAL APPROACH

5.1 PUNJAB NATIONAL BANK V. CHAJJU RAM[104]

1. The appealing party on 26th August, 1988 instituted recovery proceedings to recover Rs.6,19,250/ - in the Civil Court. Vide judgment dated sixteenth February, 1994, the Trial Court declared the suit for the previously mentioned sum with enthusiasm at the rate of 16.5 for every penny per annum from the date of documenting of the suit till the recovery of debt. On 21st December, 1994, an execution application was recorded by the appealing party under the watchful eye of the Court of Civil Judge, Dasuya. As per the litigant, a measure of Rs.12,91,398/ - being the vital measure of Rs.6,19,250/ - in addition to intrigue consequently according to the pronouncement, had turned out to be expected and payable and it was in regard of this sum execution was looked for.

2. In the in the mean time on 25th June, 1993, the Recovery of Debts because of Banks and monetary organizations act, 1993 (hereinafter alluded to as the demonstration) had come into drive. On 30th August, 1994, a Tribunal was set up in Jaipur and it was offered purview to choose guarantees even with respect to those emerging in the State of Bank. On eighteenth February, 1997, the litigant moved an application under the watchful eye of the Civil Court, for exchange of the execution procedures to the Debts Recovery Tribunal, Jaipur. This application was permitted and the Trial Court requested the exchange of the execution procedures to the Debts Recovery Tribunal, Jaipur.

3. The respondents, immediately documented a modification appeal to in the High Court. By order dated first April, 1999, the High Court arrived at the conclusion, while switching the choice of the trial Court, that the execution procedures couldn't be exchanged and it is just the Civil Court, which had passed the announcement, which could execute the same. Henceforth, this interest by Special Leave.

[104] AIR 2000 SC 2671

4. The point in issue is not any more res integra. In the wake of breaking down the arrangements of the Act, this Court in Allahabad Bank v. Canara Bank and another , held that the word continuing in Section 31 of the Act would incorporate an execution continuing pending under the watchful eye of a Civil Court before the beginning of the Act. It was additionally held that the suits and procedures so pending would stand exchanged to the Tribunal. This conclusion exuded from the way that the meaning of the word obligation contained in Section 2(g) of the Act, bury alia, implied any risk which was because of a Bank and was payable under a declaration or request of a Civil Court. The decretal amount being an obligation as conceived by Section 2(g) would unmistakably pull in the arrangements of Sections 17 and 18 of the Act which give elite ward to the Tribunals constituted there under to choose the inquiries with respect to recovery of obligations because of the Banks and budgetary organizations. Section 31 which manages exchange of cases.

5. An uncovered perusing of the aforementioned Section demonstrates that execution application being a procedure pending in a Civil Court when the Act came into drive was subject to be exchanged to the Tribunal on the grounds that the sum for which the execution application had been recorded according to the declaration which had been passed, was over Rs. 10 lakhs.

6. Learned counserl for the respondents presented that the utilization of the words reason for activity in Section 31 showed that it is just pending suits which could be exchanged. We can't concur with this accommodation. The words reason for activity are gone before by the words being a suit or continuing . Section 31 considers the exchange of a suit as well as exchange of a procedure which might be other than a suit, similar to an execution application . Comprehended in this specific situation, the words being a suit or continuing the reason for activity whereon it is based would imply that on account of an execution application if the announcement is for more than Rs.10 lakhs, at that point that is the reason for activity or the purpose behind an application for execution being recorded before the Tribunal.

7. To put matters certain, the Act has been changed by the Recovery of Debts because of Banks and money related foundations (alteration) act, 2000 and Section 31(a) has been embedded which peruses as takes after:

31A. Energy of Tribunal to issue testament of recovery if there should be an occurrence of announcement or request (1) Where an order or request was made by any Court before the beginning of the Recovery proceedings because of Banks and Financial Institutions (Amendment) Act, 2000 but the same was not yet executed, at that point, the declaration holder may apply to the Tribunal to pass a request for recovery of the sum.

2. On receiving a proper application under sub-section (1), the Tribunal may issue an endorsement for recovery to a Recovery Officer.

3. On receipt of an authentication under sub-section (2), the Recovery Officer might continue to recoup the sum as though it was a testament in regard of an obligation recoverable under this Act.

8. The aforementioned Section 31A is obviously material in the present case. The pronouncement was passed by Court before the beginning of the Amendment Act and the same has not yet been executed. In any event after the alteration, it is just the Tribunal which would have the ward of engaging the application for execution of the announcement in as much as the sum due for which the declaration was tried to be executed is over Rs. 10 lakhs. We are additionally unfit to concur with the High Court that on the grounds that the first declaration which was passed was for primary aggregate of Rs. 6,19,250/ - the Tribunal would get no locale. It is to be seen that pronouncement was for a total of Rs. 6,19,250/ - in addition to it interest at the rate of 16.5 for every penny per annum from the date of the filing of the suit till the recovery of cash. As and when the sum became due to the under Bank the announcement turned out to be more than Rs. 10 lakhs and an application for execution was recorded, it must be engaged by the Tribunal and not by the Civil Court. Plainly in see off the arrangements of Section 34 of the Act, the arrangements of Order 21 Rule 10 C.P.C. would have no application.

5.2 PUNJAB NATIONAL BANK V. O.C KRISHNAN[105]

Facts : In the moment case, a suit was recorded by the appealing party for recovery of cash from the main account holder and in addition the underwriters. The suit was exchanged to the Debts Recovery Tribunal and from that point on seventeenth May, 1996 pronouncement was passed by the Debts Recovery Tribunal, Calcutta.

The said suit was decieed for an entirety of Rs. 12,09,175.39 against the key indebted person and in addition against the underwriters, alongside intrigue subsequently, and it was additionally coordinated that the Recovery Officer might first continue to understand the sum on the offer of hypothecated plant and hardware and sold property having a place with respondents 5 and 4 individually and from there on continue to understand the adjust, assuming any, as per law. Compatible thereto, declaration was issued and recovery procedures began.

The respondent who was an underwriter and whose property was expressed to have been sold recorded a request of under Article 227 under the steady gaze of the High Court at Calcutta. The High Court permitted the request of by watching that as the sold property was arranged in Chennai the Debts Recovery Tribunal had no regional purview in regard thereto and it couldn't have coordinated offer of sold property It, as needs be, held that the Bank would be at freedom to continue against litigant No. 4, respondent in this, in suitable gathering for recovery of obligations by offer of sold property. Henceforth this interest.

As we would like to think, the request which was passed by the Tribunal coordinating offer of sold property was appealable under Section 20 of the RDDBFI Act, 1993 (for short "the Act"). The High Court should not to have practiced its ward under Article 227 in perspective of the arrangement for elective cure contained in the Act. We Jo not propose to go into the accuracy of the choice of the High Court an I whether the request go by the Tribunal was right or not needs to be chosen before a proper gathering.

[105] (2001) 6 SCC 569

The Act has been sanctioned with a view to give an uncommon system to recovery of obligations because of the banks and the budgetary establishments. There is chain of command of request gave in the Act, in particular, recording of an interest under Section 20 and this last track strategy can't be permitted to be wrecked either by taking plan of action to procedures under Articles 226 and 227 of the Constitution or by documenting a common suit, which is explicitly banished. Despite the fact that an arrangement court under Articles 226 and 227 of the Constitution, by the by when there is an elective cure accessible legal reasonability requests that the court abstains from practicing its locale under the said sacred arrangements. This was where the High Court ought not have engaged the request of under Article 227 of the Constitution and ought to have guided the respondent to take plan of action to the interest component gave by the Act.

For the previously mentioned reasons, this interest is permitted and the denounced request of the Calcutta High Court in is put aside.

5.3 ALLAHABAD BANK V. BHARAT RE-ROLLING MILLS PVT.LTD[106]

1. The appeal was preferred against the order dated 23.6.2000 pronounced by the Presiding Officer, Debts Recovery Tribunal, Patna in O.A.Case No. 133 of 1999.

2. The applicant Bank instituted a claim case before the Debts Recovery Tribunal and in the said claim case filed a composite application containing two prayers namely, prayer for temporary injunction and prayer for appointment of Receiver so far as it relates to the property of the opposite party mortgaged/hypothecated to the Bank as security for the loan. The learned Presiding Officer after hearing the parties rejected the prayer on merit as well as on technical ground.

[106] (2002) 2 BC 16 (DRAT-Chen)

3. He is of opinion that no case has been made out for injunction as well as appointment of Receiver, since there is no reasonable cause for apprehension in the minds of the appellant-petitioner. Being aggrieved the appeal has been preferred alleging that the decision given by the Presiding Officer is not in accordance with law and that he was not right in basing his decision on Civil Procedure Code while rejecting the prayers of the Bank.

4. The respondents, however, by means of written objection have supported the order of the Tribunal below.

5. So the question to be ascertained was whether the impugned order can sustain ?

6. It was put up by the Advocate appearing for the appellant that the factory of the respondent was found to be closed and, as such, there is reason to apprehend that there may be chance of illegal alienation. Reliance has also been placed on a decision reported in JT 1999(3) SC 619, in support of his contention that the Tribunal under the RDDBFI Act have got the power to grant ex-parte orders. None can dispute this proposition of law. But at the same time, the decision also lays down that the Tribunal while granting ex-parte order of injunction must record its reasons and cannot compose a stereo-typed prayer.

7. On the other hand, the learned Advocate appearing for respondent Nos. 1, land 4 as also respondent No. 3 placed reliance on a decision reported in 2001(1) CLJ 246, and elaborates the circumstances in which Receiver can be appointed.

8. So far as the respondent No. 3 is concerned, it is submitted by the learned Advocate that he has got no objection, if a Receiver is appointed since he is no longer a Director of the Company.

9. I have given my careful consideration to the submission of the learned Advocates and have also perused the impugned order. As I have said the earlier prayers were rejected on merit as well as on technical grounds. It appears from the impugned order that both the

prayers namely, temporary injunction and also appointment of Receiver were made in course of single petition which is against the procedural law. The impugned order also reveals that the learned Presiding Officer has taken the trouble of seriously scrutinizing the application made by the appellant before him and apart from apprehension and a firm conviction for which the learned Presiding Officer did not find any reasonable basis, there is no circumstance for allowing prayer of the appellant. The learned Advocate for the appellant has not also been able to bring anything to my notice which prompts me to take a view different from that of the Presiding Officer. It is true that Civil Procedure Code is not applicable to the Debts Recovery Tribunal but the decision cited by the learned Advocate for the appellant itself reveals that if situation so demands the power of the Tribunal may exceed that of the Civil Court. So far as the appointment of Receiver is concerned, the law is that it must appear just and convenient to the Presiding Officer before he can appoint a Receiver. Besides, the Statute itself says that the Tribunal is not fettered by the Civil Procedure Code but at the same time, orders passed by it shall be in consonance with natural justice. Since, the appellant has not been able to put forward such an application before the Tribunal, there is no reason to interfere with the impugned order. Hence it is:

ORDERED- That the appeal be dismissed on contest without any costs. It is, however, made clear that if situation so arises, the appellant is not precluded from making fresh application incorporating earlier prayers in accordance with law.

5.4 E. Satheesh Kumar v. Vijaya Bank[107]

The petitioner struck an agreement with the second respondent for the purchase of a textile unit, the sale consideration of the entire property being 1,50,00,000. Under the sale agreement, the petitioner undertook to discharge the debts payable to the first respondent bank and other creditors of the second respondent. On the date when the sale agreement was to be executed of, the second respondent was liable to pay a sum of Rs. 71 lakhs to

[107] (2003) 116 Comp. Cas. 549 (Mad)

the bank. and, therefore, in the agreement it was incorporated that the petitioner had to repay the said amount on condition that the second respondent obtains a letter of consent from the bank. Since the second respondent failed to obtain the letter of consent from the bank, the petitioner was not able to repay the same to the bank at the appropriate point of time. In the meanwhile, on the basis of the sale agreement, the petitioner was put in possession of the textile unit. The bank had instituted an application before the Debt Recovery Tribunal against the second respondent for the recovery of the money payable to it. The second, third and fourth respondents sought appointment of a Receiver to usurp the possession of the mortgaged property, for removing the petitioner from the possession or custody of the property and to confer upon the Receiver all necessary powers in this regard. The petitioner sought time to file a counter. The first respondent-bank filed a short memo stating that it had no objection in a Receiver being appointed. At that time, the petitioner sought sufficient time to file his counter, which was refused by the Presiding Officer, Debt Recovery Tribunal who proceeded with the appointment of a Receiver. On a writ petition, the Madras High Court, allowing the petition, held that the order passed by the Presiding Officer did not disclose any reason at all for appointing a Receiver, Merely because the bank had filed a ”short memo” stating that it had no objection in the Receiver being appointed, the Presiding Officer was not expected to allow the application without considering the objection of the contesting respondent, namely, the petitioner. The Court observed that the Debt Recovery Tribunal or the Presiding Officer was well within his power to appoint a Receiver, if it was satisfied that the same was neede and convenient and to effectuate its orders and to prevent misuse of its process as well as to secure the ends of justice. Section 19(18) of the RDDFBI Act, 1993 is in pari-materia with rule 1(d) of Order XL of the C.P.C , 1908. The said power has to be exercised for just and convenient reasons. In the absence of any reason or ground for urgency, and in the view of the language used in sub-section (18) of section 19 of the RDDBFI Act, the order could not be sustained. The Presiding Officer, Debt Recovery Tribunal, had committed an error in appointing a Receiver without assigning any reason therefor. Further, the Tribunal had failed to provide sufficient opportunity to the petitioner to submit his objection before passing the order of appointment of the Receiver, which was an abuse of the process of law, and hence it was liable to be

quashed.

Under the RDDBFI Act, 1993, all suits or other proceedings pending before High Court immediately before the appointed day automatically stood transferred by operation of law to the Debt Recovery Tribunal. The Receiver who was already appointed before the suit or proceedings stood transferred to Debt Recovery Tribunals by operation of law, if appointed without his tenure being expressly defined would continue to act as a Receiver. Even with regard to execution proceedings, the Receiver would be subject to the directions of the Court. But since the jurisdiction of High Court qua Civil Court regarding the matters falling within the province of RDDBFI Act has been taken away and vested in the Debt Recovery Tribunal, as from the cut-off date, the only forum which is competent to entertain suits or other proceedings would be the Debt Recovery Tribunal. This would be so even with regard to matters which stood transferred by operation of section 31 of the RDDBFI Act, 1993. The only Court which could thereafter competently give directions to the receiver in the discharge of his/ her duties would be the Debt Recovery Tribunal. Since no separate machinery of Court Receiver has been made available to the Debts Recovery Tribunal, it was directed that the machinery of Court Receiver should be made available to the Debt Recovery Tribunal for a period of one year from today. However any further directions to be issued to the Receiver can only come from the Debt Recovery Tribunal under the RDDBFI Act, 1993 and not from High Court on the original side.

5.5 Kumar's Cotex Ltd. v. Debts Recovery Tribunal[108]

The Debt Recovery Tribunal, m the absence of the counsel appearing on behalf of the writ petitioners ,i.e ,the borrowers and without hearing their case, passed an order dated December 10, 2001, directing the petitioners to deposit a sum of Rs. 5 lakhs per month into the Debt Recovery Tribunal, failing which a Receiver would be appointed for managing the petitioner company. Objections were filed by the petitioners opposing the

[108] (2002) 111 Comp. Cas. 49 (AP) (DB)

appointment of the Receiver and after receiving a certified copy of the order dated December 10, 2001, an affidavit was filed and on February 7, 2002, the Tribunal after hearing both the parties directed the petitioner to file an appeal against the order dated December 10, 2001. On a writ petition, a Division Bench of the Andhra Pradesh High Court, allowing the petition, held that it was seen from the objections filed by the petitioners that they were yet to file the written statement in the main original application. Even though objections were filed by the petitioners opposing the appointment of the Receiver, the Tribunal had not considered any of the objections and had passed the order dated December 10, 2001. The said order suffered from an error apparent on the face of record, was not only laconic but it was also the result of total non-application of mind by the Tribunal. The Court observed that section 19(20) of the RDDBFI Act, 1993, says that the Debt Recovery Tribunal, after affording an opportunity of hearing to both the parties, may pass such interim or final order which may also include an order for payment of interest from the date on or ,before which payment of the amount is found due up to the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice. The order of the Tribunal was contrary to the powers given under section 19(20) of the Act, as the Tribunal ought to have granted an opportunity to the petitioners to be heard before passing the order. The Tribunal had exercised the discretionary power vested in it in an unreasonable manner. The orders dated December 10, 2001, and February 7, 2002, were to be set aside and both the applications were to be restored. The Tribunal was to dispose of the memo for the appointment of the Receiving officer.

5.6 Omega AG Seeds (India) Ltd. v. Bank of Baroda[109]

The respondent-bank prayed in an application to the Debt Recovery Tribunal for a decree against the petitioners jointly and severally in an aggregate sum of Rs. 26,44,038 with further interest at the rate of 23.75 per cent. per annum from October 1, 1993, till judgment and thereafter further interest at the same rate since the advances were granted to the petitioners for commercial purposes. The petitioners had executed various

[109] (2004) 121 Comp. Cas.790 (Bom) (DB)

documents in favour of the bank agreeing to pay interest at the rate of 9.5 per cent. per annum over the Reserve Bank of India rate subject to a minimum of 21.5 per cent. per annum with quarterly rests. Although the bank did not in the application pray for quarterly rests, the Tribunal directed. the petitioners to jointly and severally pay to the bank an amount of Rs. 18,47,828 with interest at the rate of 21.5 per cent. per annum with quarterly rests . January 1, 2002, till full realisation. A review petition of the petitioners seeking review of the order of the Tribunal on the ground that the Tribunal had ordered interest with quarterly rests which was not prayed for by the bank was pending, In the mean time, the bank sought amendment of the prayer in the original application by adding the words ”quarterly rest” which the Tribunal rejected but the Appellate Tribunal permitted. On a writ petition, a Division Bench of the Bombay High Court, dismissing the petion, held that without expressing any opinion about the correctness, legality or otherwise justification of the said judgment which would be considered in appropriate proceedings including the review application made by the petitioners within the permissible parameters of review jurisdiction, it could not be said that the claim to interest at the rate of 21.5 per cent per annum with quarterly rests was not contemplated in the plaint, in view of the reference therein to various documents in which the petitioners had agreed to quarterly rests. There is no principle in law that in no case the Court or the Tribunal possesses the power of amendment in the pleadings after the disposal of the suit or proceedings. Therefore, the Appellate Tribunal had not committed any error of jurisdiction or gross error of law in permitting the bank to amend the original application after disposal of the original application by the Debt Recovery Tribunal.

5.7 Bank of Rajasthan Ltd. v. Rajasthan Breweries Ltd.[110]

The first respondent-company's failure to make payment of the credit facility availed of from the petitioner-bank, the bank moved an application to the Debt Recovery Tribunal, Jaipur, for recovery of Rs.11,34,83,080 from the respondents. The respondents, on receipt of summons, moved an application seeking time to file objections with regard to the

[110] (2001) 2 BC 182 (Raj-DB)

jurisdiction of the Tribunal, upon which an order was passed that the territorial jurisdiction could only be decided after hearing both the parties and they were directed to file their replies to the applications. Subsequently, the respondents moved an application under section 19(25) of the RDDBFI Act, 1993 for rejection of the bank's application on the basis of the agreement struck between the parties that all disputes were subject to the jurisdiction of the Delhi Court, but the Tribunal held that the question regarding jurisdiction of the Tribunal was to be determined after framing the issues. During the course of proceedings before the Tribunal, the respondents sought adjournment on the ground that two appeals against the orders of the Tribunal were filed before the Appellate Tribunal, Delhi, and as the Appellate Tribunal was seized of the matter regarding the question of jurisdiction, the Tribunal was to adjourn the proceedings before it. On a writ petition by the bank, the Jaipur Bench of the Rajasthan High Court held that the Tribunal had failed to decide the issue of jurisdiction and kept the application of the respondents in abeyance on the ground that the issue relating to jurisdiction would be decided after obtaining the pleas of both the parties. Though arguments were advanced by both the parties to the maintainability of the appeals under sections 17 and 20 of the Act before the Appellate Tribunal, the matter to be decided would depend on the order to be made by the Tribunal in regard to its jurisdiction to entertain and decide the plaint filed by the bank. section 19(25) of the Act empowered the Tribunal to pass orders directions to prevent abuse of its process or to secure the ends of justice. Therefore, the application filed by the respondents under section 19(25) of the Act challenging the jurisdiction of the Tribunal was maintainable. The balance of convenience also lay in favour of the respondents. Hence, the Tribunal was to decide the question of its territorial jurisdiction within one month from the date of receipt of the order. In the meantime, the interim order passed by the Tribunal and the order passed by the Court staying the proceedings which were pending before the Appellate Tribunal would be in force till the disposal of the decision in regard to the issue of jurisdiction.

5.8 Mrs. Kiran Batra v. Presiding Officer[111]

Debt Recovery Tribunal-1,2 the petitioner filed a writ petition seeking a direction to the Debt Recovery Tribunal to dispose, on the merits within a reasonable time to be fixed by the Court, of the application filed by the petitioner and pending before the Debt Recovery Tribunal for setting aside the ex parte decree passed by it on the application of the second respondent-bank, as far as the petitioner was concerned. The petitioner who was the second defendant in the bank's application before the Tribunal, contended that since she was not served with the summons, the Tribunal ought not to have passed an ex parte order against the petitioner solely based on paper publication. The Madras High Court held that since by virtue of section 19(25) of the RDDBFI Act, 1993, the provisions and the powers vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit are made applicable to the Tribunal for the purpose of discharging its functions under the Act, it could not be said that the procedure of paper publication was not permissible under the Act. However, taking into consideration of the fact that the petitioner's application was kept pending before the Tribunal from December, 2000, the Court directed the Tribunal to dispose of the application on the next date of hearing without adjourning the matter any further and to stay the execution of the ex parte decree till then on condition that the petitioner within two weeks deposited Rs. 1,15,00,000 without prejudice to the rights of the petitioner as well as the bank, failing which the bank shall proceed with the proposed execution.

5.9 Sebastian Chokkatu v. Industrial Development Bank of India[112]

The appellant was a guarantor for the loan availed of by a company from the first respondents bank. The company later went into liquidation and its entire assets were taken over by the Official Liquidator. The first respondent-bank, however, initiated proceedings for realisation of the amount of Rs. 5,27,86,994.50 together with interest before the Debts Recovery Tribunal which decided against the appellant. The appeal filed against the order of the Tribunal before the Debts Recovery Appellate Tribunal was

[111] (2003) 116 Comp. Cas. 668 (Mad)
[112] (2006) 132 Comp. Cas. 539 (Ker) (DB)

barred by limitation, in one case by a period of 570 days and in another by 190 days and yet another by 144 days. The application for condonation of delay filed by the appellant contending that he was a non~ resident and that in connection with his business he was travelling to various places and could not contact his counsel in time and make necessary arrangements for filing the application and when the appellant was informed of the disposal when he enquired about the matter on September 19, 2002, he immediately contacted his counsel and made arrangements for filing the appeal, and that the delay in filing appeal was not deliberate or wilful. The application was dismissed by the Appellate Tribunal. The writ petition filed by the appellant was dismissed by a Single Judge. On appeal, allowing the appeal, a Division Bench of the Kerala High Court held that this was not a case where the conduct of the appellant was contumacious or he had filed an application seeking condonation of delay on a totally false plea. It was admitted that the appellant was a Non-Resident Indian and there was no rebuttal of the averments made by the appellant in the application seeking condonation of delay that he was not in India at the time of passing of the order and that his counsel did not inform of the decision taken by the original Court. The grounds pleaded by him sufficiently made out a case for condonation of delay and the appeal should have been disposed of on the merits. Hence the order passed by the Appellate Tribunal and the judgment passed by the single judge were to be set aside. The matter was to be remitted to the Appellate Tribunal for disposing of the appeals on the merits. However, the properties of the appellant were to remain under attachment and the appellant was not to alienate them by sale, mortgage, or, in any other manner till such time as the appeals were disposed of.

5.10 Bharat Beedi Works Ltd. v. Kunhambu K.[113]

At the instance of the first respondent, the fifth respondent-bank issued bank guarantees to three different financiers in order to purchase timber. The second respondent, owner of certain property, stood as guarantor to the first respondent. The financiers invoked the bank guarantees but did not ensure supply of timber, which made the first respondent

[113] (2003) 115 Comp. Cas. 676 (Kant) (DB)

liable to pay the entire amount covered by the guarantees. On failure of payment, the bank filed a suit for recovery of money from the first respondent, which was decreed in favour of the bank, and the execution proceedings taken by the bank were transferred to the Debt Recovery Tribunal which passed an order on May 8, 1998. Steps were also taken in terms of the Second Schedule to the Income-tax Act, 1961, to recover the entire amount by sale of the property. An auction was held in which the property was delivered to the appellant who was the highest bidder. On a writ petition filed by the first and second respondents, the Single Judge set aside the public auction and quashed the confirmation of sale of property made in favour of the auction-purchaser with directions to deliver the possession of the property back to the second respondent. On appeal, a Division Bench of the Kamataka High Court, allowing the appeal, held that the respondents had an alternative remedy under rule 60(1) of the Second Schedule to the Income-tax Act by filing an application to have the sale of immovable property set aside on deposit. An application to have the sale of immovable property on the ground of non-service of notice or material irregularity in publishing or conducting the sale was provided for under rule 61 of the Second Schedule to the Income-tax Act. One could avail of the remedy under section 30 of the Recovery of Debts Due to Banks and Financial Institution.

CHAPTER - 6

CONCLUSION & SUGGESTIONS

With the establishment of dedicated institutions for debt recovery, the banks and financial organizations have at their behest a speedier and more effective mechanism to recover the hard earned money of the depositors , the legislature had conceived the idea of these institutions keeping in mind the struggle faced by the financial institutions with respect to the redemption of mounting debt increasing every day. In the Absence of legal endorsement, Recovery Officers fail to assist the Presiding officers resulting in conflicting judgments being delivered by various DRTs creating confusion and disparity in the enforcement of law itself. Huge adjournments in conducting day to day proceedings breaches the prescribed timeline of half year, where the process of adjudication continues for an indefinite period, which itself explains the retarded and lame functioning of the DRTs. The working of the DRTs needs a complete overhauling so that the banks can reclaim their current loans and offer new loans at lower rates of interest.

The existing system of recovery is not only ineffective but also insufficient. Realizing the important role that are required to be played by the DRT, it is important to ensure that sufficient numbers of such tribunals and appellate tribunals are created . There are 33 DRTs, whereas only five Debt Recovery Appellate Tribunals in the nation which raises some serious concerns about fulfillment of the promises made by the RDDBFI ,act. There is surely a requirement for more number of DRTs and the greatest test that the face presently, exists in their capacity to manage the dispute with speed. It seems that the framework that was conceived is obviously not working.

Our legal framework is both restrictive as well as insufficient in its foundation, which eventually lacks any pragmatic solution to expedite the recovery process despite there being express time limit for all the cases . The working of DRTs is also putting a lot of stress the upon the monetary managed by the RBI . Unless and until the lenders are able to recover their cash along with the interest, they cannot release fresh credits at modest

cost. Along these lines, discharging of obligation by the recovery courts extend substantial relief to the already stressed banking sector.

Likewise, the mechanism of adjournments and unwanted stay orders should also be avoided in cases where the guilt of the defaulter is eventually made out from the material evidences on record. Casual grant of stay orders ought to be checked , as there have been instances where advocates misuse the escape clauses of the Act and request for stays, causing heaping up of cases.

An in depth analysis of the recovery framework has revealed that the cases get postponed in a Debt Recovery Tribunal much against the heart and soul of the act. Banks have communicated their disappointment with the framework that was given effect to guarantee rapid recovery. The quantity of cases in prosecution is very extensive and changes ought to be made.

Unless the framework is redesigned, the rate of pendency at the Tribunal will rise at an unprecedented pace. Such a situation will genuinely erode the confidence of depositors in banks and recovery tribunals. The working of Debt Recovery Tribunals (DRTs), aims to enable financial organizations to carry out their banking operations without being subjected to the extensive systems of common courts, which had caused great pain than relief to the banks. Where the sum to be recovered in a cases decided in 2013-14 by the DRTs was Rs 30,950 crore, while it was estimated recovery tried to be made was Rs 2,36,600 crore. Thus, the recovery was just 13 for every penny of the sum in question. Likewise, while the law provides that cases before the DRTs must be settled in six months, whereas the reality shows that only a fourth of the cases pending toward the beginning of the year were settled amid the year. The working of DRTs needs to be revamped in order to ensure the banks can recoup their credits and offer new advances at affordable rates "There is unquestionably a requirement for more number of DRTs. The greatest test, it shows up, is their capacity to manage a subject with speed. Most likely, there exist a component of criticism and individuals working in DRTs ought to be urged to bring up the territories of torment," said Ashvin Parekh, Managing Partner at Ashvin Parekh Advisory Services. Deepak Haria, Senior Director at Deloitte in India,

reverberated a comparable view. "The test is that our legal framework is both obstructed and deficient in foundation, which lacks any redressal. Recovery can be swift when there is a settled time allotment for all transfers, and acknowledgment of advantages could be speeded up by having uncommon courts to manage such recoverys," he said. "On the off chance that brokers can't recover their cash, they are not going to give you credits at shabby cost. Along these lines, ensuring obligation recovery councils work better, ensuring that you don't have abundance number of stays, overabundance number of bids – that is the thing that we have to center around," former RBI Governor Raghuram Rajan said following the national bank's fifth bimonthly monetary policy.

The Supreme Court in one of the cases, while hearing the matter of surmounting non-performing resources (NPAs), asked "why such defaults happen and what ought to be done to give an edge to the obligation of recovery system" and thought about whether the recovery courts were stuck at some place for reasons unknown". The responses to these inquiries, however, most likely lie in the court's own particular professions.

In the Satyawati Tondon case, subsequent to observing the judgment in **Thansingh Nathmal Vs. The Superintendent of Taxes Dhubri and Others**, the Supreme Court had watched: "It involves genuine worry that regardless of rehashed declaration of this Court, the High Courts keep on ignoring the accessibility of statutory cures under the DRT Act and the SARFAESI Act and exercise ward under Article 226 for passing requests which have genuine unfriendly effect on the privilege of banks and other monetary establishments to recuperate their duty. We expectation and assume that in future the High Courts will practice their prudence in such issues with more noteworthy alert, care and meticulousness."

This issue was likewise hailed by previous Reserve Bank of India governor Raghuram Rajan in 2014, the year in which a World Bank give an account of legal determination in bankruptcy cases expressed that the normal time to determine an indebtedness case in India is four years, extraordinarily higher than 0.8 years in Singapore and one year in London.

Conveying the third Dr Verghese Kurien Memorial Lecture in Anand on Novermber 25, 2014, Rajan dove profound into the issue. Like how the bench lead by the then Chief Justice T.S. Thakur had brought up testing issues about how and why NPAs were rising while hearing the appeal from the Center in Public Interest, which asserted that they had mounted because of the politically impacted headway of credits to undeserving and ineligible people, Rajan additionally hailed the issue when he watched that "the sacredness of the obligation contract has been persistently disintegrated in India lately, not by little borrower but rather by the vast borrower".

Rajan, who is presently filling in as the bad habit administrator of the Bank for International Settlements, watched that "excessively numerous vast borrowers see the loan specialist, ordinarily a bank, as holding not a senior obligation guarantee that supersedes every single other claim when the borrower gets into inconvenience, yet a claim junior to his value assert."

In India, he had mourned there was "uneven sharing of hazard and returns in big business, against every single legally binding standard built up the world over" and as a result here "promoters have a class of "super" value which holds all the upside in great circumstances and next to no of the drawback in awful circumstances, while leasers, regularly open Section banks, hold "junior" obligation and get none of the fat returns in great circumstances while engrossing a significant part of the misfortunes in terrible circumstances."

This, Rajan stated, was on account of "the framework secures the substantial borrower and his perfect appropriate to remain in charge" and not for the need of laws.

Giving a nitty gritty record of how the decay was permitted to set in, the previous RBI representative stated, "the Debts Recovery Tribunals (DRTs) were set up under the RDDBFI (RDDBFI) Act, 1993 to enable banks and budgetary foundations to recoup their contribution expediently without being liable to the long systems of normal common courts. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002 went above and beyond by empowering banks

and some money related establishments to uphold their security premium and recuperate duty even without drawing closer the DRTs." Yet, he stated, the sum banks recouped from defaulted obligation stayed both pitiful and since quite a while ago postponed.

Proceeding further as to why this was going on, Rajan noticed that "however the law demonstrates that cases filed before the DRT ought to be arranged off in a half year", just about a fourth of the cases pending toward the start of the year were arranged off amid the year – proposing a four year hold up regardless of whether the courts concentrate just on old cases.

Additionally, he discussed the avoidable, routine interference of high courts in these cases as per Section 18 of the RDDBFI Act. He likewise cited the apex court's judgment in the Satyawati Tondon case.

"The results of the delays in getting judgments is the erosion of the original value of money which not only cripples the banking sector but also penalizes the credible borrowers with hefty interest rates to balance the market forces. This puts the entire economy in a chaotic situation where the government has to take the responsibility to recapitalizing the banking sector, which not only diverts liquidity away from meeting the socioeconomic needs of the country to fulfill the expansionist ambitions of the unworthy capitalist.

Looked with this asymmetry of energy, Rajan deplored that "banks are enticed to collapse and take the unreasonable arrangement the borrower offers". Asking "what number of expansive promoters have lost their homes or have needed to control their ways of life in spite of offering individual certifications to loan specialists?" Rajan said it were the dedicated savers and citizens of the nation who paid for this restricted wager the vast promoters delighted in.

By chance, the Bankruptcy Law Reforms Committee, led by previous association law secretary T.K. Viswanathan, which drafted the Insolvency and Bankruptcy Code, had in its report additionally alluded to the difficulties postured by legal intercession to the recovery procedure. It had noticed that advance recovery rates in India were among the

most minimal on the planet, with loan specialists scarcely figuring out how to recoup 20% of the estimation of the obligation in case of a default.

"The present condition of the insolvency procedure for firms is an exceedingly divided system… In a circumstance where one discussion settles on issues identifying with the privileges of the loan boss, while another chooses those identifying with the privileges of the account holder, the choices are promptly bid against and either stayed or upset in a higher court. In a perfect world, if financial esteem is without a doubt to be protected, there must be a solitary discussion that hears the two sides of the case and make a judgment in light of both," the board of trustees had watched.

In any case, the high courts, which routinely hear matters relating to DRTs, don't accept the fact that they are transgressing within the domain of DRT while adjudicating upon the orders made by them. Truth be told, regularly they have communicated their perspectives about how they ruin the recovery procedure.

In April 2018, the Punjab and Haryana high court said that "DRT ought to be rejected" as "common courts are improving the situation than DRT". The court had additionally remarked that the way in which DRTs were working, saying it would be better if the cases were exchanged back to the common courts.

So also, in September, the Gujarat high court had pulled up the DRT for its "approach", which the court said drove banks to endure and impeded their working in recouping contribution from defaulters. It had likewise reprimanded the DRT for being wrathful towards the prosecutors.

Unmistakably, as Rajan called attention to, it will take more than establishing new laws to hold over the issues relating to delays in indictment in case of obligation defaults. Furthermore, much would ultimately depend on how much the Supreme Court will allow other civil courts to intervene in these matters.

POSSIBLE SUGGESTIONS:

Recommendations to enhance the effectiveness of the Debt Recovery Tribunal are as under:

Proper Monitoring :

i. High Courts don't have supervisory authority over the Debt Recovery Tribunal in the state. However a writ petition can be filed in the High Court against an order/decree of the Debt Recovery Tribunal. Along these lines, in reality, the Debt Recovery Tribunal does not have any responsibility what so ever to any public authority. There is no system set up to guarantee that the cases at the Tribunal be arranged in an promising way. There is an additional requirement for guaranteeing responsibility for the Tribunal, there is no body or mechanism which can ensure the disposing of cases in timely manner. There should be an authority to establish the check and balance in respect of the working of Debt Recovery Tribunal. Having no upper authority the officers and staff of the DRT have become reluctant towards their responsibilities and have gone corrupt. In this regard the judgment of the apex court in **L. Chandra Kumar v. Union Of India** is very important as it Talks about the Constitution of a **National Tribunal Commission (NTC)** . The NTC will be an independent apex body that shall be conferred with the responsibility of regulating the functions and the appointments in the DRT's and DRAT's ,at the same time NTC will also enjoy the power to initiate disciplinary proceedings against the faulting members of the tribunal and to take care of their administrative and infrastructural requirements

This measure will not only restrict the political and judicial interference in the day to day functioning of the tribunal but will also rope in certain degree of professionalism in the debt recovery setup.

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Accountability

ii. Steps should be taken to investigate the reasons behind the large numbers of pending cases and make sure that the fast recovery is guaranteed in pursuance of the amendment made in the act in 2016. Each case which is being delayed, must be inquired by the Appellate Tribunal and the proper reason must be written down in terms of explanation of such delays. Further, if the explanation of the authorities related to the case is unsatisfactory, then the some requisite proceedings should be initiated against them. So as to make them accountable for the working of the Tribunal.

Transparency

iii. The NTC which has been referred to in the preceeding paragraph must be a statutory body with powers at par with the SC,ST and Backward Class commission. The NTC should be mandated under the law to submit an annual report to the President of India who shall cause it to be tabled before each house of the parliament in order to carry out the discussion in the working of Debt Recovery Tribunal, stating the number of cases which are been resolved by the Tribunal in the year in comparison to the previous year,

Lack of proper Staff :

iv. The obligation to delegate staff at the Tribunal lies with the Ministry of Finance, which is already overburdened with the fiscal management of the country. Convenient arrangements must be made by the government to ensure that creation of vacancy or shortage of staff does not becomes an impediment to guarantee smooth working of the Tribunal. Likewise, the appointment to the service must made only on merits, inclusive of individuals having fine comprehension of the law and seriousness to meet the obligation of the, for example, the Registrar and Presiding Officer. These tribunals must not turn into avenues for extending post retirement rehabilitation to the members of

the judiciary and executive and selection should be done following the strict parameters by an independent body free from political influence.

Close examination of stay petitions:

v. Stay Petitions must be carefully examined before being allowed. Permitting Stay Petitions to a large number of the cases have been the root cause for the heaping up of cases in the DRT. The habit of Deferment ought to be controlled. The very purpose of establishing these tribunals will get frustrated if they mimic the habits of civil courts, driven by adjournments and delay. Specialized institution are established to overcome the drawbacks in the existing framework but the lack of spirit and motivation to fulfill their obligation leads them into the same vicious cycle which has impeded the swift functioning of the normal courts .

Expertise Needed

vi. The Debt Recovery Tribunals are currently facing the twin trouble of inadequate staff caused by vacancy as well as absence of qualified individual to fillup these vacancy. Appointing authority must ensure that the office bearers of the tribunal such as presiding officer should possess knowledge and expertise in the banking related matters, SARFAESI Act, Debt Recovery Tribunal Acts, Economics and other related areas, similar to those of finance commission, So that it is easy for them to understand the complex nature of recovery cases for early disposal. This will help in speedy and efficient disposal of cases by the Tribunal.

Delay on the part of civil court

vii. The civil courts are approached for resolving the matters like succession, rights of property, monitoring and implementation of KYC norms or issuance of receipts, even as the case proceeds through DRT. Inability to decide such

matters delay the DRT process, since the guidance from the decisions of the civil court becomes imperative. The matters or cases whose proceedings are going on in the DRT , should be dealt in a separate and special session of the civil court, so as to avoid delay on the part of the civil court which in turn will speed up the DRT proceedings.

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