A NAHAR INDUSTRIAL ENTERPRISES LTD.

v.

HONG KONG & SHANGHAI BANKING CORPORATION

(Civil Appeal No. 4796 of 2009)

B JULY 29, 2009

[S.B. SINHA AND ASOK KUMAR GANGULY, JJ.]

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993/CODE OF CIVIL C *PROCEDURE, 1908:*

SECTIONS 17, 18, 19, 22, 25, 31/SECTIONS 3, 4, 5, 9, 16, 17, 18, 19, 20, 96, 100, 151, 195 AND ORDER XLI RULES 1, 5.

D *Suit – Whether High Court/Supreme Court has the power to transfer a suit pending in Civil Court situated in one state to a Debt Recovery Tribunal.*

Held: The very fact that a legal fiction has been created E *and the Tribunal or the Appellate Tribunal deemed to be a Civil Court for purposes of Section 195 and Chapter XXVI of CPC, itself suggests that Parliament did not intend to take away the jurisdiction of Civil Court – The legal fiction has a limited application – Its scope and ambit cannot be extended* F *– While exercising the power of transfer, the High Court and Supreme Court would be curtailing the right of a suitor indirectly which could not be done directly – It clearly establishes that Parliamentary intent that only civil suits are subject matter of inter state transfer from one Civil Court to another Civil Court – If such a power is exercised, all the rights* G *of the plaintiff remain intact, no right taken away and no right diluted – Where a matter has been expressly provided for in the body of the Code, ordinarily inherent power shall not be resorted to – If a suit is to be transferred from a Civil Court to*

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a Tribunal, the debtor would lose some rights including the right to prefer an appeal before a higher court in terms of Section 96 to 100 CPC – There exists no express power of transfer under the DRT Act which would be applicable to the facts of the present case – Application before the Tribunal would lie only at the instance of the bank or the financial institution for the recovery of its debt – Had the jurisdiction of Civil Courts been barred in respect of counter claim also, the statute would have said so and Sections 17 and 18 would have been amended to introduce the provision of counter claim – Banks and financial institutions cannot approach the Tribunal unless the debt has become due – In such a contingency civil suit will lie – Debtor may file pre-emptive suits and obtain orders of injunction but that cannot be a ground to completely oust the jurisdiction of the Civil Court – Constitution of India, Articles 226, 227.

CONSTITUTION OF INDIA, 1950:

Articles 139A, 142 – Power under – Wide and extensive – May be resorted to do complete justice – However, conditions could be imposed – But the present case not a fit case to exercise jurisdiction under Article 142.

In the Appeal and Transfer Petitions, the question involved was whether the High Court/Supreme Court has the power to transfer a suit pending in Civil Court situated in one State to a Debt Recovery Tribunal situated in another State.

Allowing the Civil Appeal and dismissing the Transfer Petitions, the Court

HELD: 1. Indisputably, however, after the amendments were carried out vide Amending Act 1 of 2000 and Amending Act 30 of 2004, the Debts Recovery Tribunal would have jurisdiction to determine the claims of set off and counter-claims. It may be that the bank or

A the financial institution in terms of the provisions of sub-section (9) of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, despite such counter-claim being treated to be a cross-suits would be entitled to raise a contention that the same B should not be determined by the Tribunal. In the event such a contention has not been raised, the Tribunal will have jurisdiction to pass a final judgment both on the claim of the bank or the financial institution on the one hand and the cross-objections of the borrower on the C other. [Para 9] [94-B-D]

Cofex Exports Ltd. vs. Canara Bank **AIR 1997 Delhi 355;** *Delhi High Court Bar Assn. v. Union of India,* **AIR 1995 Del 325 and** *Union of India v. Delhi High Court Bar Assn.* **(2002) 4 SCC 275, referred to.**

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2.1. Whereas in *Indian Bank* **it was held that the transfer can be effected with consent, the said question was ignored in** *Ranjan Chemicals.* **Whereas the question of jurisdiction of the civil court vis-a-vis the Tribunal was** E **uppermost in the mind of the Bench in** *Indian Bank*, **no significance was attached thereto in** *Ranjan Chemicals.* **It proceeded on the basis that the joint trial would be permissible if some of the issues are common and if some of the evidence to be let in is also common** F **especially when the two actions arise out of the same transactions or series of transactions wherefor several sub-sections of Section 19 of the Act had not been adverted to. In** *Ranjan Chemicals* **the Court posed a wrong question unto itself, namely the jurisdiction of the Tribunal** G **vis-a-vis exclusion of jurisdiction of the civil court.** *Indian Bank* **was decided upon taking into consideration all provisions of the Act as also the Code. It entered into the niceties of the question. It referred to all the binding precedents. It was a well considered decision.** *Ranjan Chemicals*, **therefore, was building upon the decision in**

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Indian Bank **being a coordinate Bench. It could not have taken a contrary view. It was not even held that** *Indian Bank* **was wrong far less plainly wrong. [Para 12] [103-B-F]** A

2.2. In *Ranjan Chemicals*, **the Court having not posed unto itself the aforementioned question, should have considered the decision of a coordinate bench in** *Indian Bank* **in that perspective. It must furthermore be noticed that** *Indian Bank* **was clarifying** *Abhijit Tea.* **Conditions laid down in paragraph 25 of** *Indian Bank* **must also, therefore, be read in that context as otherwise, the same would lead to misreading and misinterpreting the judgment. [Para 12] [104-C-E]** B C

Indian Bank v. ABS Marine Products (P) Ltd. **(2006) 5 SCC 72;** *State Bank of India v. Ranjan Chemicals Ltd.* **and another, (2007) 1 SCC 97;** *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. & Ors.* **(2000) 7 SCC 357;** *Union of India v. Raghubir Singh,* **(1989) 2 SCC 754;** *Union of India v. Godfrey Philips India Ltd.,* **(1985) 4 SCC 369;** *Sub-Committee of Judicial Accountability v. Union of India,* **(1992) 4 SCC 97 and** *Central Board of Dawoodi Bohra Community v. State of Maharashtra,* **(2005) 2 SCC 673, referred to.** D E

3.1. The provisions for transfer under the DRT Act especially Section 31 which states that only suits or proceeding pending before the court immediately before the establishment of the Tribunal under the Act shall stand transferred to the Tribunal. Section 31 admittedly does not apply to the facts and circumstances of the present case. There is no dispute in this behalf. Moreover, it is beyond any dispute that there exists no other provision for transfer under the DRT Act from a Court to Tribunal. The respondents, therefore, do not and cannot rely on any of the provisions of the DRT Act for contending that the Court had any other power to direct transfer. [Para 13] [106-B-D] F G H

A **3.2. There exists no express power of transfer under the DRT Act which would be applicable to the facts of the present case. The provisions of the Act and the entire statutory scheme being well-defined, no further elaboration is required. [Para 13] [107-A-B]**

B *Raghunath Rai Bareja & Anr. v. Punjab National Bank & Anr,* **(2007) 2 SCC 230, referred to.**

4.1. Civil court is a body established by law for administration of justice. Different kinds of law, however C **exists, constituting different kinds of courts. Which courts would come within the definition of the civil court have been laid down under the Code of Civil Procedure itself. Civil Courts contemplated under Section 9 of Code of Civil Procedure find mention in Sections 4 and 5** D **thereof. Some suits may lie before the Revenue Court, some suits may lie before the Presidency Small Causes Courts. The Code of Civil Procedure itself lays down that the Revenue Courts would not be courts subordinate to the High Court. [Para 15] [109-G-H; 110-A-B]**

E **4.2. Civil Courts are constituted under statutes, like Bengal, Agra and Assam Civil Courts Act, 1887. Pecuniary and territorial jurisdiction of the civil courts are fixed in terms thereof. Jurisdiction to determine subject matter of suit, however, emanates from Section 9 of the** F **Code. [Para 15] [110-C-D]**

4.3. Be that as it may, the word `civil court' vis-`-vis a court must be construed having regard to the text and context of the statute. [Para 15] [111-D]

G *State of M.P. v. Anshuman Shukla,* **(2008) 7 SCC 487;** *Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd.* **1950 SCR 459;** *P. Sarathy v. State Bank of India* **(2000) 5 SCC 355 and** *State of Madhya Pradesh and another v. Anushuman*

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Shukla (2008) 7 SCC 487, referred to. A

5.1. A provision in the Code which is benevolent in character and sub serve the social justice doctrine in a situation of that nature has been applied, but the same, by itself would not make a Tribunal a civil court. No B reason has been assigned as to why a Tribunal has been considered to be a civil court for the purpose of Section 25 of the Act. The court appears to have proceeded on the basis that an appeal before the High Court shall lie in terms of Section 173 of the Motor Vehicles Act, 1988 C from an Award passed by the Tribunal, thus showing that it is a part of the hierarchy of the civil court. Motor Accident Claims Tribunal, thus, is a court subordinate to the High Court. No appeal against the judgment of the Debt Recovery Tribunal lies before the High Court unlike under the Motor Vehicles Act, 1988. The two Tribunals are D differently structured and have been established to serve totally different purposes. If the Tribunal was to be treated to be a civil court, the debtor or even a third party must have an independent right to approach it without having to wait for the Bank or Financial Institution to approach E it first. The continuance of its counter-claim is entirely dependant on the continuance of the applications filed by the Bank. Before it no declaratory relief can be sought for by the debtor. It is true that claim for damages would be maintainable but the same have been provided by way F of extending the right of counter-claim. Debt Recovery Tribunal cannot pass a decree. It can issue only recovery certificates. The power of the Tribunal to grant interim order is attenuated with circumspection. [Para 16] [115-C-H; 116-A-B] G

5.2. Concededly in the proceeding before the Debt Recovery Tribunal detailed examination; cross-examinations, provisions of the Evidence Act as also application of other provisions of the Code of Civil H

A Procedure like interrogatories, discoveries of documents and admission need not be gone into. Taking recourse to such proceedings would be an exception. Entire focus of the proceedings before the Debt Recovery Tribunal centers round the legally recoverable dues of the bank. B They have their own hierarchy. They necessarily are subordinate to the High Court. The appeals from their judgment will lie before a superior court. The High Court is entitled to exercise its power of revision as also superintendence over the said courts. [Para 16] [116-B-C E]

5.3. Only because a court or a tribunal is entitled to determine an issue involving civil nature, the same by itself would not lead to the conclusion that it is a civil court. For the said purpose, as noticed hereinbefore, a D legal fiction is required to be created before it would have all attributes of a civil court. The Tribunal could have been treated to be a civil court provided it could pass a decree and it had all the attributes of a civil court including undertaking of a full-fledged trial in terms of the E provisions of the Code of Civil Procedure and/or the Evidence Act. [Para 16] [116-F-H; 117-A]

5.4. It is now trite law that jurisdiction of a court must be determined having regard to the purpose and object F of the Act. If the Parliament, keeping in view the purpose and object thereof thought it fit to create separate tribunal so as to enable the banks and the financial institutions to recover the debts expeditiously wherefor the provisions contained in the Code of Civil Procedure as G also the Evidence Act need not necessarily be resorted to, by taking recourse to the doctrine of purposive construction, another jurisdiction cannot be conferred upon it so as to enable this Court to transfer the case from the civil court to a tribunal. [Para 16] [117-A-C]

H 5.5. The High Court ordinarily can be approached in

exercise of its writ jurisdiction under Article 226 or its jurisdiction under Article 227 of the Constitution of India. The High Court exercises such jurisdiction not only over the courts but also over the Tribunals. Appellate tribunals have been constituted for determining the appeals from judgments and orders of the Tribunal. The principles of purposive construction, therefore, are not attracted in the instant case. Had the Parliament intended to make the Tribunals civil courts, a legal fiction could have been raised. There are statutes like the Andhra Pradesh Land Grabbing Act where such a legal fiction has been raised. [Para 16] [117-H; 118-A-B]

5.6. Whereas the doctrine of purposive construction is a salutary principle, the same cannot be extended to a case which would lead to an anomaly. It can inter alia be resorted to only when difficulty or doubt arises on account of ambiguity. It is to be preferred when object and purpose of the Act is required to be promoted. [Para 16] [118-C-D]

Bhagwati Devi v. M/s IS Goel, 1983 [ACJ 123]; *Kususm Ignots & Alloys v. Punjab National Bank*, (2005) 12 SCC 358; *Rajasthan State Road Transport v. Poonam Pahwa*, (1997) 6 SCC 100; *Dolly Kantibhai Patel v. Balu Tukaram*, (2001) 9 SCC 723; *Mohan Singh v. Saheb Singh*, (2000) 9 SCC 403; *Kahlon v. K Paramasivam*, (2004) 13 SCC 564 and *M/s Jai Shiva Cement v. Allahabad Bank*, (JT) 2000 (8) SC 323, distinguished.

New India Assurance Company Ltd. v Nusli Neville Wadia and Another (2008) 3 SCC 279; *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Another* (2007) 6 SCC 528; *South Eastern Coalfields Ltd. v. CCET, MP* (2006) 6 SCC 340; *Uco Bank v. Rajinder Lal Capoor* (2008) 5 SCC 257 and *Sri Ram Saha v. State of West Bengal and Ors.* JT 2004 (9) SC 136 : (2004) 11 SCC 497, held inapplicable.

A *Parmananda Pegu v. State of Assam*, **(2004) 7 SCC 779**; *Dataware Design Labs. v. State Bank of India*, **[2005] 12 Comp. Cas. 176 (Ker) at 184 and** *V. Laxminarasamma v. A. Yadaiah (Dead) and Ors.*, **2009 (3) SCALE 685, referred to.**

B *United States v. Detroit Timber & Lumber Co.*, **200 U. S. 321, 337, referred to.**

6. The Tribunal was constituted with a specific purpose as is evident from its statement of objects. The C **preamble of the Act also is a pointer to that too. It has a limited jurisdiction. Under the Act, as it originally stood, did not even have any power to entertain a claim of set off or counter-claim. No independent proceedings can be initiated before it by a debtor. A debtor under the** D **common law of contract as also in terms of the loan agreement may have an independent right. No forum has been created for endorsement of that right. Jurisdiction of a civil court as is barred only in respect of the matters which strictly come within the purview of Section 17** E **thereof and not beyond the same. The Civil Court, therefore, will continue to have jurisdiction. [Para 17] [119-E-G]**

Industrial Credit and Investment Corpn. of India Ltd. v. Grapco Industries Ltd., **(1999) 4 SCC 710, relied on.**

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7. The Court would be subordinate to High Court in terms of the provisions of the Code only in the event it comes within the purview of the hierarchy of the court as contained in Section 3 of the Act. This, however, does G **not mean that even when the Presiding Judge or the Presiding Officer of the Court exercises power conferred upon it under a statute still then it would not be a court subordinate to the High Court. A court while adjudicating a dispute under the Employees State Insurance Act or a** H **Reference Court under the Land Acquisition Act, Election**

Tribunal or a Tribunal acting as a Motor Vehicles Accident Claim Tribunal, while exercising revisional jurisdiction from an order passed by the Executive Magistrate under the Code or exercising an appellate power under special statutes like Municipal Acts would still be a court subordinate to the High Court. However, for the aforementioned purpose the Presiding Officer must be holding a Court which would otherwise come within the purview of the hierarchy of the courts. [Para 18] [121-F-H; 122-A-B]

N.P. Balakrishanan v. P.M.R. Mariyumma, AIR 1997 Kerala 89; *M/s. Brooke Bond India Ltd. v. Union of India and others*, AIR 2001 AP 526; *Devendra Somabhai Naik v. M/s. Accurate Transheet Pvt. Ltd.* AIR 2003 Gujarat 141; *State Bank of India v. Madhumita Construction (Pvt.) Ltd. And others*, AIR 2003 Cal 7 and *Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd.*, (2007) 6 SCC 236, referred to.

8.1. The Civil Court indisputably has the jurisdiction to try a suit. If the suit is vexatious or otherwise not maintainable action can be taken in respect thereof in terms of the Code. But if all suits filed in the Civil Courts, whether inextricably connected with the application filed before the DRT by the banks and financial institutions are transferred, the same would amount to ousting the jurisdiction of the Civil Courts indirectly. Suits filed by the debtor may or may not be counter claims to the claims filed by banks or financial institutions but for that purpose consent of the plaintiff is necessary. It is furthermore difficult to accept the contentions of the respondents that the statutory provisions contained in section 17 and 18 of the DRT Act have ousted the jurisdiction of the civil court as the said provisions clearly state that the jurisdiction of the civil court is barred in relation only to applications from banks and financial institutions for recovery of debts due to such banks and financial

institutions. A civil court is entitled to decide the respective claims of the parties in a suit. It must come within the purview of the hierarchy of courts as indicated in Section 3 of the Code. It will have jurisdiction to determine all disputes of civil nature unless the same is barred expressly by a statute or by necessary implication. The jurisdiction of the civil court would be ousted only in respect of the matters contained in Section 18 which has a direct co-relation with Section 17 thereof, that is to say that the matter must relate to a debt payable to a bank or a financial institution. The application before the Tribunal would lie only at the instance of the bank or the financial institution for the recovery of its debt. Had the jurisdiction of the civil courts been barred in respect of counterclaim also, the statute would have said so and Sections 17 and 18 would have been amended to introduce the provision of counterclaim. [Para 19] [125-E-H; 126-A-E]

8.2. It must be remembered that the jurisdiction of a civil court is plenary in nature. Unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits. [Para 19] [127-B-C]

8.3. The Act, although, was enacted for a specific purpose but having regard to the exclusion of jurisdiction expressly provided for in Sections 17 and 18 of the Act, it is difficult to hold that a civil court's jurisdiction is completely ousted. Indisputably the banks and the financial institutions for the purpose of enforcement of their claim for a sum below Rs. 10 lakhs would have to file civil suits before the civil courts. It is only for the claims of the banks and the financial institutions above the aforementioned sum that they have to approach the Debt Recovery Tribunal. It is also without any cavil that the banks and the financial institutions, keeping in view the provisions of Sections 17 and 18 of the Act, are

necessarily required to file their claim petitions before the Tribunal. The converse is not true. Debtors can file their claims of set off or counter-claims only when a claim application is filed and not otherwise. Even in a given situation the banks and/or the financial institutions can ask the Tribunal to pass an appropriate order for getting the claims of set-off or the counter claims, determined by a civil court. The Tribunal is not a high powered tribunal. It is a one man Tribunal. Unlike some Special Acts, as for example Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 it does not contain a deeming provision that the Tribunal would be deemed to be a civil court. [Para 19] [130-A-E]

8.4. The liabilities and rights of the parties have not been created under the Act. Only a new forum has been created. The banks and the financial institutions cannot approach the Tribunal unless the debt has become due. In such a contingency, indisputably a civil suit would lie. There is a possibility that the debtor may file preemptive suits and obtain orders of injunction, but the same alone, by itself cannot be held to be a ground to completely oust the jurisdiction of the civil court in the teeth of Section 9 of the Code. Recourse to the other provisions of the Code will have to be resorted to for redressal of his individual grievances. It is also difficult to accept the contention that the civil court's jurisdiction is not in consonance with the Act. [Para 19] [130-F-H; 131-A]

8.5. On the ground of inconsistency in the procedures contained in the two Acts alone, the jurisdiction of the civil court cannot be said to have been ousted. Sub-section (2) of Section 22 deals with applicability of the provisions of the Code in a limited manner. Sub-section (3) raises a legal fiction that the proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the

A meaning of Sections 193 and 228 and for all the purposes of Section 196 of the Indian Penal Code, 1860. The very fact that a legal fiction has been created and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for purposes of Section 195 and Chapter XXVI of
B the Code of Civil Procedure, 1908, itself suggests that the Parliament did not intend to take away the jurisdiction of the civil court. In any event, the said legal faction has a limited application. Its scope and ambit cannot be extended. The Parliamentary statutes, like the Family
C Courts Act confer all the powers on Family Courts which are essential for discharging the functions of Civil Court under the Code of Criminal Procedure. This Court accepts that disposal of a civil suit takes a long time. But indisputably remedy of summary and speedy trial by itself
D would not be sufficient to oust the jurisdiction of the civil court. Had the intention of the Parliament been so, it could have expressly said so. Casus omissus, as is well known, cannot be supplied. [Para 19] [131-B; 132-H; 133-A-F]

E *Dhulabhai v. State of M.P.*, (1968) 3 SCR 662; *Dwarka Prasad Agarwal v. Ramesh Chander Agarwal*, (2003) 6 SCC 220; *Nagri Pracharini Sabha v. Vth Addl. Distt. and Sessions Judge*, 1991 Supp (2) SCC 36; *Ramesh Chand Ardawatiya v. Anil Panjwani*, (2003) 7 SCC 350; *Rajasthan SRTC v. Zakir*
F *Hussain*, (2005) 7 SCC 447 and *Vijay Kumar Sharma v. State of Karnataka*, (1990) 2 SCC 562, referred to.

9.1. The Code not only contains procedural provisions but also substantive rights ; right of appeal is one of them. A forum of appeal is determined in terms of
G the provisions of the Code having regard to the pecuniary jurisdiction of the Court as may be notified by the appropriate Government from time to time. A suitor has the right to maintain a first appeal. A second appeal also is maintainable before a High Court, subject of course to
H the effect that questions of law must be there for the

court's consideration. For the said purpose no pre-deposit is required to be made, as is necessary in terms of the Act, that 75% of the awarded amount is required to be deposited, subject of course, to an order to the contrary, which may be passed by the Debt Recovery Appellate Tribunal. Such a right of conditional appeal, curtails party's right to maintain an appeal as a matter of right. While saying so, this Court is not oblivious of the fact that in terms of Order XLI Rule 1 of the Code, in the event of passing of a money decree the amount is required to be deposited. The said provision, however, has been held to be directory. Order XLI Rule 1 is required to be read with Order XLI Rule 5 thereof. [Para 20] [135-C-F]

9.2. A civil suit may also be maintainable before Original Side of the High Court in terms of the statutes under which the High Courts are constituted or in terms of the provisions of the Letters Patent. An intra court appeal is available against a decree passed by a Single Judge of a High Court in a suit filed before it. In the event, however, if a civil suit is transferred to the Debt Recovery Tribunal, the plaintiff would be deprived of his right in relation to the procedural mechanism as contained in the Code as also the Evidence Act. His right of appeal would also stand curtailed. While exercising the power of transfer, the High Court and this Court would thus be curtailing the right of a suitor indirectly which could not be done directly. It clearly establishes the Parliamentary intent that only civil suits are subject matter of inter State transfer from one civil court to another civil court. If such a power is exercised, all the rights of the plaintiff remain intact, no right is taken away and no right is diluted. [Para 20] [136-B-E]

Colonial Sugar Refining Company v. Irving, (1905) AC 369 (PC); *Garikapati Veeraya v. N. Subbiah Choudhry*, 1957 SCR 488; *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and*

A *Anr.*, **(2007) 6 SCC 528**; *Sihor Nagar Palika Bureau v. Bhabhlubhai Virabhai & Co.*, **(2005) 4 SCC 1**; *Malwa Strips Pvt. Ltd. v. Jyoti Limited* **(2009) 2 SCC 426** and *Transmission Corporation of A.P. v. Ch. Prabhakar and Ors.*, **(2004) 5 SCC 551, referred to.**

B **10.1. Section 151 of the Code of Civil Procedure does not confer any extraordinary jurisdiction on this Court. It saves the inherent power of all the civil courts, i.e., from the trial judge to this Court. Thus, where a matter has expressly been provided for in the body of the Code,** C **ordinarily inherent power shall not be resorted to. The underlying principle of Section 151 of the Code ordinarily would apply where the area is grey. It indisputably confers incidental powers. It confers power on a court to do something which in absence of any provision** D **contrary thereto would lead to advancement of justice and prevent injustice. The power to transfer one case from one court to another or from one tribunal to another having jurisdiction of a different State is an extraordinary jurisdiction. For exercising the said power, this Court has** E **to take into consideration a large number of factors. Such a power is to be exercised if exceptional situation arises and not otherwise. [Para 21] [136-F-H;137-A-B]**

10.2. The Plaintiff furthermore is the dominus litus. He may institute a suit having regard to the provisions F **contained in Sections 16 to 20 of the Code of Civil Procedure in any civil court within whose jurisdiction inter alia a cause of action arises. If the jurisdiction of the civil court is not barred or if he having regard to common law principle is entitled to maintain an action in two** G **different forums, he may choose one of them. A debtor having regard to the provisions of the DRT Act would not be entitled to maintain an action before the Tribunal. If a suit is to be transferred from a civil court to a tribunal, he would lose some rights including the right to prefer an** H **appeal before a higher court in terms of Sections 96 and**

100 of the Code of Civil Procedure. [Para 21] [139-A-D] A

10.3. This Court is also unable to persuade to hold that the right of transfer of a case being procedural in nature should be construed liberally. By reason thereof, substantive right of a party cannot be taken away. The rules of procedures are intended to provide justice and not to defeat it. [Para 21] [140-E-F] B

Padma Sen and Another v. The State of Uttar Pradesh **AIR 1961 SC 218**; *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* **AIR 1962 SC 527**; *Rajasthan State Road Transport Corporation and Anr. v. Bal Mukund Bairwa,* **2009 (2) SCALE 428**; *Union of India and Another v. Delhi High Court Bar Association and Others* **(2002) 4 SCC 275**; *M/s. Ram Chand and Sons Sugar Mills Private Ltd. v. Kanhayalal Bhargava and Others* **AIR 1966 SC 1899**; *N.T. Veluswami Thevar v. G. Raja Nainar and others* **[AIR 1959 SC 422**; *M/s. Lakshmiratan Engineering Works Ltd. v. Asst. Commissioner (Judicial) I., Sales Tax, Kanpur Range, Kanpur and another* **AIR 1968 SC 488**; *Industrial Investment Bank of India Ltd. v. Marshal's Power & Telecom (I) Ltd. and Another* **(2007) 1 SCC 106**; *Durga Hotel Complex v. Reserve Bank of India and Others* **(2007) 5 SCC 120 and** *Durgesh Sharma v. Jayshree,* **(2008) 9 SCC 648, referred to.** C D E

11. Indisputably, the power of this Court under Articles 139A and 142 of the Constitution of India is a wide and extensive one. This Court may resort thereto to do complete justice. While doing so, this Court would be entitled to impose conditions. This Court is of the opinion that it may not be a fit case to exercise jurisdiction under Article 142 of the constitution of India. [Para 22] [141-D-E; 142-B] F G

Mardia Chemicals Ltd. and Others v. Union of India **(2004) 4 SCC 311, referred to.**

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A **12. It is made clear that having regard to the pleadings of the parties as also the purpose and object for which the Tribunal has been constituted, it should proceed to dispose of the bank's claims expeditiously. This Court has no doubt that while determining the** B **respective claims of the parties and the nature thereof, the tribunal shall comply with all the requirements of law. [Para 23] [142-C-D]**

Case Law Reference:

C	(2006) 5 SCC 72	referred to	Para 5
	(2007) 1 SCC 97	referred to	Para 5
	(2008) 9 SCC 648	referred to	Para 6
D	AIR 1997 Delhi 355	referred to	Para 9
	AIR 1995 Del 325	referred to	Para 9
	(2002) 4 SCC 275	referred to	Para 9
	(2000) 7 SCC 357	referred to	Para 10
E	(1989) 2 SCC 754	referred to	Para 12
	(1985) 4 SCC 369	referred to	Para 12
	(1992) 4 SCC 97	referred to	Para 12
F	(2005) 2 SCC 673	referred to	Para 12
	(2007) 2 SCC 230	referred to	Para 13
	(2008) 7 SCC 487	referred to	Para 15
G	1950 SCR 459	referred to	Para 15
	(2000) 5 SCC 355	referred to	Para 15
	(2008) 7 SCC 487	referred to	Para 15
	1983 [ACJ 123]	distinguished	Para 16
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(2005) 12 SCC 358	distinguished	Para 16
(1997) 6 SCC 100	distinguished	Para 16
(2001) 9 SCC 723	distinguished	Para 16
(2000) 9 SCC 403	distinguished	Para 16
(2004) 13 SCC 564	distinguished	Para 16
(JT) 2000 (8) SC 323	distinguished	Para 16
(2008) 3 SCC 279	held inapplicable	Para 16
(2007) 6 SCC 528	held inapplicable	Para 16
(2006) 6 SCC 340	held inapplicable	Para 16
(2008) 5 SCC 257	held inapplicable	Para 16
JT 2004 (9) SC 136 :		
(2004) 11 SCC 497	held inapplicable	Para 16
(2004) 7 SCC 779	referred to	Para 16
[2005] 12 Comp. Cas.		
176 (Ker) at 184	referred to	Para 16
2009 (3) SCALE 685	referred to	Para 16
200 U. S. 321, 337	referred to	Para 16
(1999) 4 SCC 710	relied on	Para 17
AIR 1997 Kerala 89	referred to	Para 18
AIR 2001 AP 526	referred to	Para 18
AIR 2003 Gujarat 141	referred to	Para 18
AIR 2003 Cal 7	referred to	Para 18
(2007) 6 SCC 236	referred to	Para 18
(1968) 3 SCR 662	referred to	Para 19

(2003) 6 SCC 220	referred to	Para 19
1991 Supp (2) SCC 36	referred to	Para 19
(2003) 7 SCC 350	referred to	Para 19
(2005) 7 SCC 447	referred to	Para 19
(1990) 2 SCC 562	referred to	Para 19
(1905) AC 369 (PC)	referred to	Para 20
1957 SCR 488	referred to	Para 20
(2007) 6 SCC 528	referred to	Para 20
(2005) 4 SCC 1	referred to	Para 20
(2009) 2 SCC 426	referred to	Para 20
(2004) 5 SCC 551	referred to	Para 20
AIR 1961 SC 218	referred to	Para 21
AIR 1962 SC 527	referred to	Para 21
2009 (2) SCALE 428	referred to	Para 21
(2002) 4 SCC 275	referred to	Para 21
AIR 1966 SC 1899	referred to	Para 21
AIR 1959 SC 422	referred to	Para 21
AIR 1968 SC 488	referred to	Para 21
(2007) 1 SCC 106	referred to	Para 21
(2007) 5 SCC 120	referred to	Para 21
(2004) 4 SCC 311	referred to	Para 22

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4796 of 2009.

From the Judgment & Order dated 15.9.2008 of the High

Court of Punjab & Haryana at Chandigarh in Transfer Application No. 186 of 2008.

WITH

T.P.(C) No. 1195 of 2008.

T.P. (C) No. 1196 of 2008, 1207-1209 of 2008.

Dr. A.M. Singhvi, Ashok Desai, Shyam Divan, K.K. Venugopal, Rakesh Dwivedi, R.F. Nariman, S. Ganesh, Nandini Gore, Diya Kapoor, Premtosh Mishra, Pragya Singh Baghel, Lakshmi Ramachandran, Jatin Mongia, (for Manik Karanjawala), Sameer Parekh, H. Jayesh, Huzefa Nasikwala, Nitin Thukral, Arjun Garg, Rukhmini Bobde, Ruchi Aggarwal (for Parekh & Co.) B. Rajendran, I. Abrar, V. Balaji, Parvesh Thakur, (for Narendra Kumar) for the appearing parties.

The Judgment of the Court was delivered by

S.B. SINHA, J.1. Leave granted.

INTRODUCTION

2. Whether the High Court and/or this Court has the power to transfer a suit pending in a Civil Court situated in one State to a Debt Recovery Tribunal situated in another is the question involved herein.

BACKGROUND FACTS

3. We may notice the facts of the matter from Civil Appeal @ SLP (C) No.24715 of 2008. It arises out of a judgment and order dated 15th September, 2008 passed by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh in Transfer Application No.186 of 2008 whereby and whereunder the suit filed by the appellant and pending before the Civil Judge (Junior Division), Ludhiana was transferred to the Debt Recovery Tribunal-III at Mumbai.

A Some of the parties to the lis before us are the banks or financial institutions within the purview of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (1993 Act). The others are debtors of such banks or financial institutions. The parties hereto entered into diverse agreements in terms B whereof banks or the financial institutions lent money to the debtors.

Appellant entered into International Swaps and Derivatives Agreement with the respondent. On 1.11.2006, the appellant and the respondent entered into globally used market standard C Master Agreement and Schedule published by ISDA (ISDA Master Agreement) (hereinafter referred to as "Master Agreement") wherein the respondent undertook derivative transactions for hedging or transformation of risk exposure.

D Under the said Master agreement i.e. the ISDA Agreement including the Schedule thereto, the appellant had entered into ten transactions with the respondent and out of those ten transactions, appellant has unwound (closed at the instance of the appellant at a mutually agreed value) four transactions; one E transaction got matured and one expired due to occurrence of a contingent event. In all the six transactions, appellant had received an aggregate sum of about Rs.1,87,00,000/- (Rupees one crore eighty seven lakhs only) from the respondent. In respect of 2 transactions Swap Reference: NCW072009996 F and Swap Reference: NCW 072009997 both dated 13th July, 2007, the appellant has till date received Rs.13,00,000 (Rupees Thirteen Lakhs Only) from the respondent.

As on 02.04.2008, four foreign exchange derivative transactions were outstanding between the appellant and the G respondent, dated 13.07.2007, 13.07.2007, 26.07.2007 and 30.07.2007.

Appellant vide his letter of 03.04.2008 purported to disclaim, repudiate and reject only two out of those four H transactions, i.e., the transactions with trade dates 26th July

2007 and 30th July, 2007. A

Appellant filed a suit in the Civil Court at Ludhiana seeking a declaration that foreign exchange derivative contracts dated 26.7.2007 and 30.7.2007, entered into by and between them were void as being illegal and violative of Foreign Exchange Management Act, 2000 as well as the Circulars and Guidelines issued by the Reserve Bank of India, and, thus, against public policy. The said suit was marked as Civil Suit No.108 of 2008. B

An application for grant of injunction was also filed. By reason of an order dated 5.4.2008, the learned Civil Judge directed both the parties to maintain status quo in regard to the said two contracts, directing: C

> "Lest the purpose be not defeated by delay, both the parties are directed to maintain status quo (as on today) regarding the contracts involving the present cases till 16.4.2008. Compliance U/O 39 R.3 CPC be made as per rules. Plaintiffs shall also be duty bound to get the service effected on defendants for date fixed Summons be also given dasti." D E

The said order of status quo is said to have been communicated to the respondent on or about 8.4.2008.

Respondent issued a notice dated 12.4.2008 upon the appellant terminating the pending derivative transaction. F Appellant contends that termination of the said derivative transaction is in violation of the order of status quo passed by the learned Civil Judge on 5.4.2008. Appellant responded to the said notice calling upon it to withdraw the same.

On or about 15.4.2008, the respondent-bank filed an G application before the Debt Recovery Tribunal at Mumbai marked as OA No.122 of 2008 along with an interim application marked as Interim Application No.125 of 2008 for recovery of dues under the two remaining Foreign Exchange Derivative Contracts dated 13.7.2007. H

A Meanwhile, the order of status quo passed on 5.4.2008 was extended by the learned Civil Judge by an order dated 16.4.2008 till 23.4.2008. In the original application filed by the respondent-bank, the Tribunal by an order dated 22.4.2008 restrained the appellant from alienating, or in any way creating B third party interests in its fixed assets in relation to the transactions which were not the subject matter of the suit. Respondent-bank issued two letters on 24.4.2008 to the appellant calling upon it to pay the amount due under the two transactions dated 26.7.2008 and 30.7 2008, and on the same C day filed another application before the Debt Recovery Tribunal for recovery of dues under the said two foreign exchange derivative contracts.

An application for clarification and/or modification of stay of the order dated 5.4.2008 was filed by the appellant before D the civil judge which was heard on 13.5.2008 and 17.5.2008 The matter was adjourned to 29.5.2008.

IMPUGNED JUDGMENT

E 4. Respondent, however, filed transfer application before the High Court of Punjab & Haryana on or about 27.5.2008 seeking transfer of proceedings pending before the Civil Judge, Ludhiana to the Debts Recovery Tribunal. III, Mumbai. An application for violation of the order of injunction was filed by the appellant before the Civil Court on 28.5.2008. By reason F of the impugned order, a learned Single Judge of the High Court allowed the said application transferring the suit filed by the appellant in the Ludhiana court to the DRT tribunal Mumbai in the form of a counter claim.

G The Banks and the Financial Institutions including Axis Bank have also filed Transfer Petitions, said to be by way of abundant caution, before this Court under Section 25 of the Code which are marked as TP (C) Nos. 1207-1209 of 2008 and 1195-2008 & 1196-2008 respectively .

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While issuing the notice in SLP (C) No. 24715 of 2008 this Court, by order dated 20.10.2008, directed :-

"Issue notice.

Mr. Sameer Parekh, Advocate accepts notice on behalf of the respondent.

As the question involved in this petition is a pure question of law, no counter affidavit need be filled.

Put up for final disposal on 2nd December, 2008.

We make it clear that on that day, this Court shall consider as to whether this Court, in the peculiar facts and circumstances of this case, may exercise its jurisdiction under Article 142 of the Constitution of India.

In the meantime, there shall be stay of the operation of the final judgment and order dated 15.9.2008 of the High Court of Punjab & Haryana in Transfer Application No.186/2008 as also stay of the proceedings before the Debt Recovery Tribunal, Mumbai in OA Nil of 2008 (Lodging No.270).

The parties shall file written submissions before the next date of hearing."

ISSUES ARISING

5. In the background of these facts, the following questions that arise for our consideration are:

(I). Whether the High Court/Supreme Court has the power to transfer a suit from a Civil Court to the DRT, keeping in mind,

a. The effect of a transfer from the Civil Court to the DRT is to oust the jurisdiction of the civil court which cannot be done without express statutory provisions.

A

b. Proceedings before DRT is sui generis & totally different from the procedure in a Civil Court.

c. Power of transfer under CPC (Sections 22, 23, 24 and 25) is inapplicable as these sections apply in a case where the transfer is from one Court to another & DRT being not a Court.

B

d. The power to transfer under the DRT Act is restricted to cases filed by Banks that were pending on the date when the Act came into force and in respect of those cases in which DRT has jurisdiction.

C

D

(II). Whether the decision of this Court in *Indian Bank v. ABS Marine Products (P) Ltd.* [(2006) 5 SCC 72], is applicable in the case of transfer of a suit from the Civil Court to the DRT to be tried as a counterclaim, and could a Coordinate two Judge Bench in *State Bank of India v. Ranjan Chemicals Ltd.* and another, [(2007) 1 SCC 97] have departed from the ratio thereof after noticing it and without referring the matter to a larger bench of Three Judges?

E

F

(III) Even if the power to transfer exists, in the facts and circumstances of the case, whether it ought to have been exercised.

(IV) Whether Article 142 is applicable to direct a transfer from a Civil Court to DRT, especially when:

G

(i) The DRT Act does not bar the jurisdiction of the Civil Court to entertain a suit against a bank and therefore powers under Article 142 ought not to be exercised to have such an

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effect.

(ii) Article 142 is not applicable where a statute occupies the field.

(iii) Power under Article 142 should be exercised only to prevent injustice and do complete justice between the parties.

(V). Whether in the exercise of powers under Article 142, transfer of case ought to be refused to do complete justice between the parties and the proceedings before the DRT be stayed pending disposal of the suit.

SUBMISSIONS OF THE COUNSEL

6. Dr. A.M. Singhvi, Mr. S. Ganesh, Mr. Rohington Nariman and Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the appellants would contend :

(1) The High Court had no power to transfer a pending Civil Suit to a Debt Recovery Tribunal as the same was beyond its jurisdiction.

(2) The High Court and/or the Supreme Court have no power to transfer a case from a Civil Court to Debt Recovery Tribunal inasmuch as :

(a) The effect of a transfer from Civil Court to Debt Recovery Tribunal would oust the jurisdiction of the Civil Court which is impermissible in law in absence of any express statutory provision.

(b) Debt recovery proceeding is sui generis and provides for a totally different procedure from the one followed under the Code of Civil Procedure.

(c) Power to transfer vested in the High Court or on this Court being confined to Sections 22, 23, 24 and 25, the same cannot be applied for the purpose of transferring a Civil Suit to Debt Recovery Tribunal, as the latter is not a Civil Court.

(d) The power to transfer under DRT Act must be confined in respect of cases filed by banks which were pending on the date DRT Act came into force.

(e) This Court in *Indian Bank* v. *ABS Marine* (supra) having categorically held that no suit could be transferred from a Civil Court to a Debt Recovery Tribunal as a counter claim, keeping in view the scheme contained in the said Act and the Code, the contrary view taken in *Ranjan Chemicals*, (supra) cannot be held to be good law.

(f) The provision of Section 23(3) of the Code being a procedural provision, as has been held by this Court in *Durgesh Sharma v. Jayshree,* [(2008) 9 SCC 648], High Court cannot be said to have any power/jurisdiction to transfer a suit pending in a Civil Court, which is subordinate to it, to a Tribunal which is not subordinate to the High Court.

(g) *Ranjan Chemicals* having failed to appreciate that transfer of a suit from the Civil Court to the Debt Recovery Tribunal without plaintiffs' consent resulted in defeating the plaintiff's statutory right to approach the Civil Court and furthermore resulted in ouster of the jurisdiction thereof, neither of which could be ordered or directed without any specific

empowering provision in the statute. A

(h) It is well settled legal position that jurisdiction of the Civil Court can only be ousted by a specific and unequivocal statutory provision or by necessary implication. B

(i) Transfer of a suit to a Tribunal having no jurisdiction to decide the issues raised by the plaintiff against the bank and/or financial institution would affect the rights of the appellant. It would furthermore affect its right C of appeal, which is a right vested on the plaintiff on the date of filing of the suit. The condition of pre-deposit being one of the conditions for maintaining an appeal before the Appellate Tribunal, in the event such a D right of transfer is upheld, the same would amount to burdening the right of appeal with certain conditions which the Parliament never intended to confer. An unfettered right of appeal, which is statutory would thus E become fettered, without the intervention of statute. Thus, what has not been done directly would be done indirectly as a result of transfer.

(j) The Bench deciding *Ranjan Chemicals* F being a coordinate Bench to the previous Bench deciding *Indian Bank* was bound to follow it, for maintenance of judicial discipline. In the event of any disagreement, the only course open to it was to refer the question G to a larger Bench.

(k) The suit filed by the appellant involved complicated questions of law relating to interpretation of Section 45U and 45V of the H

Reserve Bank of India Act, 1934 as also questions relating to fraud etc. These questions cannot be satisfactorily decided by the Tribunal which does not have expertise in such matter.

(l) In one of the cases, the suit has been filed on the Original Side of the High Court of Madras with leave in terms of Clause 12 of the Letters Patent and against an interlocutory order an intra court appeal filed under Clause 15 thereof is pending, no order of transfer could have been passed both in relation to the suit as also the appeal as neither the Tribunal nor the Appellate Tribunal can be a substitute for the High Court as also the Division Bench thereof.

(m) In the Ludhiana suit application under Order XXXIX Rule 2A of the Code having been pending in respect whereof the Tribunal did not have jurisdiction, in the event an order of transfer is passed, would lead to a great anomaly, as the suit must be transferred along with all incidental or supplemental proceedings in respect whereof the Debt Recovery Tribunal would have no jurisdiction under the Act.

(n) Alternatively, it was argued that even if the power to transfer exists, in the facts and circumstances of this case and in the interests of justice, the same should not be exercised.

(o) This Court also should not exercise its jurisdiction under Article 142 of the Constitution of India as the said Act does not

bar the jurisdiction of the Civil Court to entertain a civil case against a bank since the field is occupied by the statute and it is a settled law that power under Article 142 of the Constitution of India can be exercised only to prevent injustice and to do complete justice between the parties.

Mr. Shyam Diwan and Mr. Ashok Desai, learned senior counsel appearing on behalf of the respondent, on the other hand, contended:-

(a) Definition of 'debt' as contained in Section 2(g) of the Act means any liability which is claimed as due from any person by a bank during the course of any business activity undertaken by it and would bring within its purview any agreement for enforcement whereof the bank should have no option but to approach the Tribunal only.

(b) When a particular claim made by a bank is a 'debt' within the meaning of the provisions of the Act, it must be determined or adjudicated upon by the Tribunal only and not by a Civil Court.

(c) The allegation of 'Fraud', 'Misrepresentation', 'Undue Influence' or any other defence, which are available to a borrower to contest the claim of the bank, can be raised before the Tribunal itself and adjudicated upon and determined by the Tribunal.

(d) As both the suits pending before the Civil Court and/or the High Court as also the petitions pending before the Tribunals arise out of the Master Agreement entered into by and between the parties, the Tribunal having jurisdiction would be entitled to determine the said questions.

(e) Having regard to the scheme of the Act as also the

provisions of the Code, the Tribunal must be given an extended meaning so as to hold that the Tribunal is in effect and substance a court and thus the High Court in exercise of its jurisdiction under Section 24 of the Code and this Court in exercise of its jurisdiction under Section 25 thereof have ample jurisdiction to transfer a suit to the Tribunal.

(f) In the event it is held that neither the High Court nor this Court have the jurisdiction to direct such transfer, the borrowers would be free to file vexatious preemptive suits and obtain order of injunctions which will cause hindrance to the cause of administration of justice

(g) Even if it is held that the High Court did not have jurisdiction to order such transfer under Section 24 of the Code, it must be held to have inherent powers under Section 151 thereof.

(h) This Court in any event should exercise its jurisdiction under Article 142 of the Constitution of India with a view to do complete justice between the parties and to avoid an injustice to the cause of the administration of justice.

STATUTORY FRAMEWORK

7. RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

Before dealing with the rival contentions of the parties, we must first set out the relevant statutory provisions. The 1993 Act was enacted to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons for enacting the said Act reads as under:

"Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realized without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfill a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on 30th September, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs.5622 crores in dues of Public Sector Banks and about Rs.391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country."

Section 2 is the interpretation section.

Section 2(g) defines 'debt' to mean any liability (inclusive

A of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether B secured or unsecured, or assigned, or whether payable under a decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting and legally recoverable on, the date of the application.

Chapter II deals with establishment of Tribunals and C Appellate Tribunals. Sub-section (1) of Section 3 deals with establishment of Tribunal. Sub-section (2) provides that the Central Government shall also specify, in the notification referred to in sub-section (1), the areas within which the Tribunal may exercise its jurisdiction for entertaining and deciding the D applications filed before it. Chapter III of the Act deals with jurisdiction, powers and authority of Tribunals.

Section 17 reads as under:

"Section 17 - Jurisdiction, powers and authority of E *Tribunals.*—(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide *applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.*

F

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain *appeals against any order made, or deemed to have been made, by a Tribunal under this Act."*

G

Section 18 bars the jurisdiction of all courts in relation to the matters specified in Section 17 (except of the Supreme Court and of a High Court under Articles 226 and 227 of the Constitution). Chapter IV deals with the procedure of the Tribunals. Section 19 provides for an application by a bank or

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financial institution to recover any debt from any person. Sub-section (8) of Section 19 enables a defendant to set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant in addition to his right of pleading a set-off under sub-section (6). Sub-section (9) provides that such a counter claim shall have the same effect as a cross-suit. Sub-section 22 of Section 19 empowers the Presiding Officer of a Tribunal to issue a certificate under his signature on the basis of an order of the Tribunal to the Recovery Officer for recovery of the amounts of debt specified therein.

We may, however, notice that Section 19 of the Act was amended twice, - once by Act 1 of 2000 which came into force w.e.f. 17.1.2000 and the second time by Act 30 of 2004 which came into force on and from 11.11.2004.

Section 22 provides for the procedure and powers of the Tribunal and Appellate Tribunal, sub-section (1) whereof reads as under:

> *"Section 22 - Procedure and Powers of the Tribunal and the Appellate Tribunal.*—(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings."

Section 24 provides that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to a Tribunal.

Section 31 provides for transfer of pending cases. It reads, thus :

> *"Section 31. Transfer of pending cases.*—(1) Every suit

A or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action where on it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of B such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any court.

C (2) Where any suit or other proceeding stands transferred from any court to a Tribunal under sub-section (1),—

(a) the court shall, as soon as may be after such transfer, forward the records of such suit or other D proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made under section 19 from E the stage which was reached before such transfer or from any earlier stage as the Tribunal may deem fit."

CODE OF CIVIL PROCEDURE

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8. We may, at this juncture, also notice some of the provisions of the Code of Civil Procedure (Code), which are of relevance herein.

Section 2 (2) defines a "decree" to mean the formal G expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any H question within section 144, but shall not include-- (a) any

adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default. An explanation is added to that definition which says a decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

'Judge' has been defined under Section 2(8) to mean the presiding officer of a Civil Court. Section 2(14) defines an "order" to mean the formal expression of any decision of a Civil Court which is not a decree.

Section 3 of the Code provides for hierarchy of courts in the following terms :-

> "Section 3 - Subordination of Courts
>
> For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court."

The Code recognizes different courts, the "revenue court" being one of them. Sub-section (2) of Section 5 provides that 'revenue court' would not be civil court.

Section 9 of the Code empowers the Civil Court to try all suits of civil nature excepting the suits of which their cognizance is either expressly or impliedly barred.

Sections 10 and 11 thereof deal with stay of suit and res judicata. Section 12 provides for bar to further suit.

The place of suing of a suit is dealt with under Sections 15 to 21. Section 22 provides for power to transfer suits which may be instituted in more than one court.

Section 23 of the Code reads as under:

A "*Section 23-To what Court application lies.*—(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

B (2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court C within the local limits of whose jurisdiction the Court in which the suit is brought is situate."

Section 24 provides for the general power of transfer and withdrawal. Sub-section (5) of Section 24 provides that a suit D or proceeding may be transferred from a Court which has no jurisdiction to try it. Sub-Sections (1) and (5) of Section 25 provides for power of Supreme Court to transfer suits in the following terms:

"*25. Power of Supreme Court to transfer suits, etc.*—(1) E On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred F from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

xxx xxx xxx

G (5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding."

H Section 153B provides that trial must be held in an open

court. Provisions of Order XX Rule 1 provide not only that Civil Court must pronounce a judgment in open court but it must also date and sign the same.

EFFECT OF AMENDMENTS

9. The Debts Recovery Tribunal has been constituted for determining a specific category of cases, namely – recovery of debts due to Banks and Financial Institutions. It has wide powers. It may determine all the issues relating to or connected with the recovery of debt due to banks and financial institutions. A fortiori all defences which can ultimately be raised before it by the borrowers for contesting a claim of the Bank or the Financial Institution can also be determined by it. Indisputably prior to amendments of the Act before 2000 and 2004, a plea of set off or counter-claim was not available to a debtor.

The question as to whether a High Court had power to transfer a counter claim to the Debts Recovery Tribunal came up for consideration before Delhi High Court in *Cofex Exports Ltd. vs. Canara Bank* [AIR 1997 Delhi 355] wherein the High Court opined that Debt Recovery Tribunal is not a court but is a Tribunal having been created by a statute vested with a special jurisdiction to try only applications by banks or financial institutions to recover any debt. Although having regard to the provisions contained in clauses (a) to (b) of sub-section (2) of Section 22 of the Act it had all the trappings of a court but it was held not to be a court as such, opining:

> "38. For reasons more than one, we are of the opinion that a set-off or a counter claim cannot be entertained by a Debt Recovery Tribunal. [...] It has not been conferred with jurisdiction to entertain counter-claim or plea of set-off by reference to the provisions of Order 8 of the CPC. Entertaining a counter-claim or a cross suit or a plea of set-off would not only be without jurisdiction but also an exercise in futility inasmuch as the Tribunal would not adjudicate thereupon nor pass a decree in favor of the

A defendant against the plaintiff. The law creating Tribunal and conferring jurisdiction on it has not provided for set-off or counter claim being entertained by it just as the Civil Procedure Code does it for civil courts. If a counter claim was to be tried by Tribunal it may have to go into disputes
B arising between the parties though not 'filling the same character'. There may be disputes which by no stretch of imagination can be tried by Tribunal. Claims preferred by bank or financial institutions are capable of being disposed of by summary enquiry while claims preferred by
C other persons would not be capable of being so disposed of. The principle of convenience and the mechanics of litigation before Tribunal (as set out in the Act) - both exclude set-off or counter claim being placed before the Tribunal. If set-off, counter claims and cross suits were
D allowed to be raised before the Tribunal the very object behind its creation will be lost."

In relation to the conflict of jurisdiction between the Civil Court and the Tribunal, it was observed:

E "39. ... Finality shall attach to the findings arrived at and reached by each of the two within its respective jurisdictional competence. Issues heard and decided by the Tribunal shall operate as res judicata and shall bind the parties in the suit before the civil court by virtue of
F explanation VIII to S. 11 Civil Procedure Code . However, the civil court shall be free to decide such issues as lie within its jurisdictional competence. If the civil court must decide an issue seized by it and within its competence and if there be an unavoidable conflict between the findings
G recorded by the civil court and by the Tribunal, the finding of Civil Court would obviously override and supersede the findings recorded by the Tribunal for a court is a court and tribunal is a tribunal; the former adjudicates on trial, the later holds only a summary inquiry guided by principles of natural
H justice as the Act provides."

It was, thus, held that the Tribunal is inferior to that of the Civil Court. The Court summed up its conclusions, thus:

> "42. To sum up our answers to the questions referred to in para 7 above are:-
>
> 1. A suit the subject matter whereof lies within the jurisdictional competence of the Tribunal cannot be refused to be transferred by a civil court to the Tribunal merely because a cross suit or a counter claim has been filed or preferred before the civil court.
>
> 2. A cross suit or cross claim or a plea in the nature of set-off cannot be transferred to the Tribunal along with the suit with which it is associated and which is liable to be transferred to the Tribunal.
>
> 3. A plea of set-off raised in a suit filed by a bank or financial institution cannot be tried by Tribunal nor would it enable the suit being retained by civil court before it if the subject matter of suit lies within the jurisdictional competence of tribunal otherwise."

One of the questions which would arise, thus, for our consideration is whether having regard to the amendment of Section 19 by reason of Act 1 of 2000 and Act 30 of 2004 empowering the Tribunal to determine a claim of set off and/or counter claim, and whether *Cofex Exports Ltd.* (supra) is still good law.

The Debts Recovery Act, as it originally stood, did not contain any provision enabling a defendant in an application filed by the bank/financial institution to claim any set-off or make any counterclaim against them. On that, among other grounds, the Act was held to be unconstitutional by the Delhi High court in *Delhi High Court Bar Assn. v. Union of India,* [AIR 1995 Del 325]. During the pendency of appeal against the said decision, before this Court, the Act was however amended by Act 1 of 2000 to remove the lacuna by providing for set-off and

A counterclaims by defendants in the applications filed by banks/ financial institutions before the Tribunal. The provisions of the Act as amended were upheld by this Court in *Union of India v. Delhi High Court Bar Assn.* [(2002) 4 SCC 275].

B Indisputably, however, after the aforementioned amendments were carried out, the Debts Recovery Tribunal would have jurisdiction to determine the claims of set off and counter-claims. It may be that the bank or the financial institution in terms of the provisions of sub-section (9) of Section 19 of the Act, despite such counter-claim being treated to be a cross-
C suits would be entitled to raise a contention that the same should not be determined by the Tribunal. In the event such a contention has not been raised, the Tribunal will have jurisdiction to pass a final judgment both on the claim of the bank or the financial institution on the one hand and the cross-objections
D of the borrower on the other.

THREE AUTHORITIES

ABHIJIT TEA

E 10. *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. & Ors.* reported in [(2000) 7 SCC 357] has been relied on for the proposition that even a claim for relief of specific performance, perpetual and mandatory injunction being the subject matter of the suit by the respondent therein was in the
F nature of counter claim. Therein, the following questions were framed:

> "(1) Whether the suit No. 410/1985 by the Bank which was disposed by judgment dated 29-3-94 and which judgment
G was set aside by the Bench on 11-8-98 and remanded to the Single Judge, could not be treated as pending immediately before the commencement of the Act on 27-4-94 (in West Bengal) and whether it could not be transferred to the Recovery Tribunal)?

H

(2) What is the combined effect of Sections 18 and 31 and of the Act on pending proceedings?

(3) Whether the pendency of suit No. 272/ 1985 filed by the debtor company against the Bank for specific performance and for perpetual and mandatory injunctions raising common issues between parties in both these suits was a sufficient reason for retention of the Bank's suit No. 410/85 on the original side of the High Court to be tried alongwith the Suit No. 272/85 filed by the debtor company?

(4) Whether the suit No. 272/85 filed by the debtor company was, in substance, one in the nature of a "counter-claim " against the Bank and was one which also fell within the special Act by reason of Section 19(8) to (11) of the Act (as introduced by Amending Act 1/2000) and if that be so, whether it could still be successfully pleaded by the respondent-company that the pendency of the company's suit 272/85 was a ground for retention of Bank's suit No. 410/85 on the original side of the High Court?"

Applying the principles of purposive construction as well as having regard to the statements of objects and reasons of the Act, it was held that if speedy disposal is the purpose of the Act, in the event of the respondent's contention being accepted, the suit would perpetually remain pending on the original side of the Calcutta High Court because of the provisions contained in Section 18 of the Act, stating :

"Surely, that would place the Bank in a worse position after the 1993 Act than before inasmuch as before the Act, there was at least the possibility of the Bank's suit being decided by the civil court on some future day, however, remote."

It was opined:

"38. In our view, the above pleas raised by the respondent company are all inextricably connected with the amount

A claimed by the Bank. The plea of the company is that interest is not to be charged or is to be charged at a lesser rate, that instalments are to be permitted and more monies should have been advanced. In our view, these claims made by the Company in its suit 272/85 against B the Bank amount to 'counter claim' and fall within Sub-clauses (8) to (11) of Section 19 of the Act (as introduced by Act 1/ 2000). The plea for deduction of damages is in the nature of a 'set off' falling under Sub-clauses (6) and (7) of Section 19."

C Holding that the suit of specific performance of contract, perpetual and mandatory injunction were in the nature of counter claim which comes within the purview of sub-section (8) of Section 19 of the Act, it was opined:

D "41. ... A permanent injunction directing the Bank not to charge interest because of an alleged agreement in that behalf is likewise a plea that no interest is chargeable. So far as the plea for further financial assistance is concerned, it is also, broadly, in the nature of a 'counter-claim'. All E these fall under Section 19(8) to (10). Again, the plea for deducting 'damages' though raised in the suit is indeed broadly a plea of "set off" falling under Sub-clause (6) and (7) of Section 19.

42. Both the suits, the one by the Bank against the F respondent (suit 410/85) and the other by the debtor against the Bank (suit 272/ 85) which raises claims or pleas in the nature of set-off or counter-claim are interconnected. The respondent's suit falls under Sub-clauses (6), (7) and (8) to (11) of Section 19, as stated G above. Our decision in regard to the real nature of suit 272/ 85 has become necessary in the context of a plea by the debtor-company that the company's suit 272/85 is liable to be retained in the civil Court and on account of the plea that the connected suit by the Bank 410/85 is also to be H retained. Such a plea, as shown above, cannot be

accepted. Thus, both the suits are suits falling within the Act." A

Therein the company approached the appellant Bank for certain credit facilities. However, by sanction advices the bank gave ad hoc sanction upto Rs.5,00,000/-; whereas according to the bank, the company could utilize the said credit facilities but committed default in paying the amount of advance. The Bank filed an OA for recovery thereof. The Bank also sanctioned a middle term loan and certain other credit facilities but the sanctioned loan was not utilized. The company filed a suit for damages with interest. B C

INDIAN BANK

11. In that case, the following questions were raised :

"*(i)* Whether the subject-matter of the borrower's suit before the High Court and the Bank's application before the Tribunal were *inextricably connected?* D

(ii) Whether the provisions of the Debts Recovery Act mandate or require the transfer of an independent suit filed by a borrower against a bank before a civil court to the Tribunal, in the event of the bank filing a recovery application against the borrower before the Tribunal, to be tried as a counterclaim in the bank's application? E

(iii) Whether the observation in *Abhijit* that the suit filed by the borrower against the bank has to be transferred to the Tribunal for being tried as a counterclaim in the applications of the bank, is to be construed as a principle laid down by this Court, or as an observation in exercise of power under Article 142 in order to do complete justice between the parties?" F G

The credit facilities and the packaging facilities were held to be not inextricably linked with each other stating : H

A "**9.** The issues that arose in the Bank's application was whether the borrower failed to repay the sums borrowed and whether the Bank was entitled to the amounts claimed. On the other hand, the issues that arose in the borrower's suit were whether the Bank had promised/agreed to
B advance certain monies; whether the Bank committed breach in refusing to release such loans in terms of the sanction letter; whether the borrower failed to fulfil the terms and conditions of sanction and therefore the Bank's refusal to advance, was justified; and even if there was breach,
C whether the borrower suffered any loss on account of such non-disbursement and if so whether the borrower was entitled to the amounts claimed. While the claim of the Bank was for an ascertained sum due from the borrower, the claim of the borrower was for damages which required
D firstly a determination by the court as to whether the Bank was liable to pay damages and thereafter assessment of quantum of such damages. Thus there is absolutely no connection between the subject matter of the two suits and they are no way connected. A decision in one does not depend on the other. Nor could there be any apprehension
E of different and inconsistent results if the suit and the application are tried and decided separately by different forums. In the circumstances, it cannot be said that the borrower's suit and the Bank's application were inextricably connected."

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In the fact situation obtaining therein, the suit by the Bank and the suit of the company against the Bank were found to be not inextricably connected, i.e. decision in one would not affect the decision in the other.

G

Abhijit Tea was clarified to the effect that where the respective claims of the parties were not inextricably connected, the transfer of a suit to the Tribunal can be only on the basis of consent of the parties and not otherwise.

H The first question was, thus, answered in the negative.

On the second question, the Court distinguishing the decision in *Abhijit Tea Co. (P) Ltd. & Ors.* (supra) in regard to the question whether an independent suit of a defendant in the bank's application can be deemed to be a counter claim and can be transferred to the Tribunal, opined that the same would apply only where the following conditions are satisfied, in the following words:

> **"25.** Though there appears to be some merit in the first respondent's submission, we do not propose to examine that aspect. Suffice it to clarify that the observations in *Abhijit* that an independent suit of a defendant (in the bank's application) can be deemed to be a counterclaim and can be transferred to the Tribunal, will apply only if the following conditions were satisfied:
>
> *(i)* The subject-matter of the bank's suit, and the suit of the defendant against the bank, should be inextricably connected in the sense that decision in one would affect the decision in the other.
>
> *(ii)* Both parties (the plaintiff in the suit against the bank and the bank) should agree for the independent suit being considered as a counterclaim in the bank's application before the Tribunal, so that both can be heard and disposed of by the Tribunal.
>
> In short the decision in Abhijit is distinguishable both on facts and law."

In regard to the effect of sub-sections (6) to (11) of Section 14 of the amended Act, it was observed :

> "16. ... The effect of sub-sections (6) to (11) of Section 19 of the amended Act is that any defendant in a suit or proceeding initiated by a bank or financial institution can: (a) claim set-off against the demand of a bank/financial institution, any ascertained sum of money legally recoverable by him from such bank/financial institution; and

A (b) set-up by way of counterclaim against the claim of a bank/financial institution, any right or claim in respect of a cause of action accruing to such defendant against the bank/financial institution, either before or after filing of the application, but before the defendant has delivered his B defence or before the time for delivering the defence has expired, whether such a counterclaim is in the nature of a claim for damages or not. What is significant is that Sections 17 and 18 have not been amended. Jurisdiction has not been conferred on the Tribunal, even after C amendment, to try independent suits or proceedings initiated by borrowers or others against banks/financial institutions, nor the jurisdiction of civil courts barred in regard to such suits or proceedings. The only change that has been made is to enable the defendants to claim set-D off or make a counterclaim as provided in sub-sections (6) to (8) of Section 19 in applications already filed by the banks or financial institutions for recovery of the amounts due to them. In other words, what is provided and permitted is a cross-action by a defendant in a pending application by the bank/financial institution, the intention being to have E the claim of the bank/financial institution made in its application and the counterclaim or claim for set-off of the defendant, as a single unified proceeding, to be disposed of by a common order."

F It was held :

"18. In this case, the first respondent does not wish his case to be transferred to the Tribunal. It is, therefore, clear that the suit filed by the first respondent against the Bank G in the High Court for recovery of damages, being an independent suit, and not a counterclaim made in the application filed by the Bank, the Bank's application for transfer of the said suit to the Tribunal was misconceived and not maintainable. The High Court, where the suit for damages was filed by the Company against the Bank, H

long prior to the Bank filing an application before the Tribunal against the Company, continues to have jurisdiction in regard to the suit and its jurisdiction is not excluded or barred under Section 18 or any other provision of the Debts Recovery Act."

The question came up for consideration again in *Ranjan Chemicals* (supra), wherein this Court, inter alia, held that having regard to the nature of the respective claims arising out of the loan transactions, the Court can exercise its inherent jurisdiction when it was just and proper to order a joint trial of the two causes as there is nothing in the Act to show that the Tribunal is prevented from entertaining the claim made by the borrower in his suit. Purporting to distinguish the decision in *Indian Bank* (supra), it was held that as the claim of the company in the suit could have been maintained as a counter claim in the application of the bank, there was no warrant for curtailing the power of the court to order joint trial by introducing a restriction to the effect that it could be ordered only if there was consent by both the parties, holding:

"8. Their Lordships have held that the subject matter of the suit and the proceeding before the Tribunal were in no way connected, but it appears to us that the two litigations arise out of the same transaction or series of transactions between the Bank and the Company. Even if, as observed by their Lordships, a counter claim in the application by the Bank before the Tribunal was not the only remedy available to the Company but an option was available to the Company to sue, and the Company has exercised that option by filing a suit, it does not in any manner affect the power of the Court to order a joint trial of the application and the suit in the Debt Recovery Tribunal provided the Debt Recovery Tribunal has jurisdiction to entertain the action of the Company. What is relevant to note is that the claim of the Company in the suit could have been maintained as a counter-claim in the application of the

A bank, even if it did not arise out of the same cause of action. There is no warrant for curtailing the power of the Court to order joint trial by introducing a restriction to the effect that a joint trial can be ordered only if there was consent by both sides. The power inherent in the Court on
B well accepted principles to order a joint trial, does not depend upon the volition of the parties but it depends upon the convenience of trial, saving of time and expenses and the avoidance of duplicating at least a part of the evidence leading to saving of time and money."

C It was opined:

"11. A joint trial is ordered when a Court finds that the ordering of such a trial, would avoid separate overlapping evidence being taken in the two causes put in suit and it
D will be more convenient to try them together in the interests of the parties and in the interests of an effective trial of the causes. This power inheres in the Court as an inherent power. It is not possible to accept the argument that every time the Court transfers a suit to another court or orders a
E joint trial, it has to have the consent of the parties. A Court has the power in an appropriate case to transfer a suit for being tried with another if the circumstances warranted and justified it. In the light of our conclusion that the claim of the company in the suit could be considered to be a claim
F for set off and a counter claim within the meaning of Section 19 of the Act, the only question is whether in the interests of justice, convenience of parties and avoidance of multiplicity of proceedings, the suit should be transferred to the Debt Recovery Tribunal for being tried jointly with the
G application filed by the bank as a cross suit. Obviously, the proceedings before the Debt Recovery Tribunal could not be transferred to the civil Court since that is a proceeding before a Tribunal specially constituted by the Act and the same has to be tried only in the manner provided by that Act and by the Tribunal created by that Act. Therefore, the

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only other alternative would be to transfer the suit to the Tribunal in case that is found warranted or justified."

PRECEDENTIAL VALUE

12. The core question which would arise for our consideration is whether by reason of a transfer the jurisdiction of the civil court can be taken away or otherwise conferred upon the Tribunal? In *Indian Bank* and *Ranjan Chemicals* coordinate bench of this court took somewhat different views even thereupon. Whereas in *Indian Bank* it was held that the transfer can be effected with consent, the said question was ignored in *Ranjan Chemicals*. Whereas the question of jurisdiction of the civil court vis-à-vis the Tribunal was uppermost in the mind of the Bench in *Indian Bank*, no significance was attached thereto in *Ranjan Chemicals*. It proceeded on the basis that the joint trial would be permissible if some of the issues are common and if some of the evidence to be let in is also common especially when the two actions arise out of the same transactions or series of transactions wherefor several sub-sections of Section 19 of the Act had not been adverted to. In *Ranjan Chemicals* the Court posed a wrong question unto itself, namely the jurisdiction of the Tribunal vis-à-vis exclusion of jurisdiction of the civil court. *Indian Bank* was decided upon taking into consideration all provisions of the Act as also the Code. It entered into the niceties of the question. It referred to all the binding precedents. It was a well considered decision. *Ranjan Chemicals*, therefore, was building upon the decision in *Indian Bank* being a coordinate Bench. It could not have taken a contrary view. It was not even held that *Indian Bank* was wrong far less plainly wrong.

Submission of the learned counsel appearing on behalf of the Bank that consent of the parties would not be required in a case where the subject matter of the banker's suit as also the suit of the debtor are inextricably connected, would have to be rejected. We do not see any reason why both the conditions laid down in *Indian Bank* (supra) should be read disjunctively

A and not conjunctively. The Division Bench used the words "following conditions" which would clearly go to show that both of them are required to be conjunctively read. We are not here concerned with the question whether the civil suit filed by a debtor should be read as a counter-claim for the purpose of
B exercising jurisdiction under Section 25 of the Code as in effect and substance we are concerned with the jurisdiction of this Court to pass an order of transfer. If this Court has no jurisdiction, the question of considering the plaint filed by the debtor as a counter-claim in the suit filed by the Bank before
C the DRT would not arise.

In *Ranjan Chemicals* (supra), therefore, in our opinion, the Court having not posed unto itself the aforementioned question, should have considered the decision of a coordinate bench in *Indian Bank* (supra) in that perspective. It must furthermore be
D noticed that *Indian Bank* (supra) was clarifying *Abhijit Tea* (supra). Conditions laid down in paragraph 25 of *Indian Bank* (supra) must also, therefore, be read in that context as otherwise, the same would lead to misreading and misinterpreting the judgment.

E

We may notice some decisions of this court as regards the binding nature of the precedents of a coordinate Bench.

In *Union of India v. Raghubir Singh,* [(1989) 2 SCC 754], this Court has held :-

F

"27. [...] It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the Rule has been evolved, in order to promote consistency and certainty in the development
G of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges.

H

28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court."

See also *Union of India v. Godfrey Philips India Ltd.,* [(1985) 4 SCC 369]

In *Sub-Committee of Judicial Accountability v. Union of India,* [(1992) 4 SCC 97], this Court has held :-

"5.... Indeed, no co-ordinate bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another co-ordinate bench.

In *Central Board of Dawoodi Bohra Community v. State of Maharashtra,* (2005) 2 SCC 673 this Court has held :-

"12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) ... It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

A We are in agreement with all the above observations of this court. *Ranjan Chemicals* was bound by the decision rendered in *Indian Bank* being a coordinate Bench. It could not have taken a contrary view.

B **SECTION 31 OF DRT ISSUE:**

13. We may at this juncture notice the provisions for transfer under the DRT Act especially Section 31 which states that only suits or proceeding pending before the court immediately before the establishment of the Tribunal under the Act shall C stand transferred to the Tribunal. Section 31 admittedly does not apply to the facts and circumstances of the present case. There is no dispute in this behalf. Moreover, it is beyond any dispute that there exists no other provision for transfer under the DRT Act from a Court to Tribunal. The respondents, D therefore, do not and cannot rely on any of the provisions of the DRT Act for contending that the Court had any other power to direct transfer.

In *Indian Bank* (supra) this court noted thus:

E "15. [...] There is no provision in the Act for transfer of suits and proceedings, except section 31 which relates to suit/ proceedings by a bank or financial institution for recovery of a debt. It is evident from section 31 that only those cases and proceedings (for recovery of debts due to banks and F financial institutions) which were pending before any court immediately before the date of establishment of a tribunal under the Debts Recovery Act stood transferred, to the tribunal"

G In *Raghunath Rai Bareja & Anr. v. Punjab National Bank & Anr,* (2007) 2 SCC 230 this court opined:

"19. [...] Apart from section 31, there is no other provision for transferring a suit or other proceedings pending before any other court to tribunal. [...]

H

28. [...] whatever power there are of transfer of proceedings to the tribunal are contained in section 31 of the RBD Act, and no transfer is permissible dehors section 31."

Therefore there exists no express power of transfer under the DRT which would be applicable to the facts of the present case. The provisions of the Act and the entire statutory scheme being well-defined, no further elaboration on our part is required.

POWER IN THE COURT TO TRANSFER CASES UNDER SECTIONS 23, 24, AND 25 OF THE CODE.

14. The power of the High Court to issue a direction for transfer of a suit beyond its territorial jurisdiction in terms of sub-section (3) of Section 23 of the Act came up for consideration recently in Durgesh Sharma v. Jayshree [supra]. Noticing the history of the provisions relating to transfer to which we have adverted to heretobefore, it was held:

"46. Having considered the scheme of the Code as amended from time to time, in our judgment, the law relating to transfer of cases (suits, appeals and other proceedings) is well settled. It is found in Sections 22 to 25 of the Code and those provisions are exhaustive in nature. Whereas Sections 22, 24 and 25 deal with power of transfer, Section 23 merely provides forum and specifies the court in which an application for transfer may be made. Section 23 is not a substantive provision vesting power in a particular court to order transfer.

47. In our considered opinion, where several courts having jurisdiction are subordinate to one appellate court, an application for transfer may be made to such appellate court and the court may transfer a case from one court subordinate to it to another court subordinate to it. Likewise, where such courts are subordinate to the same

A High Court, an application may be made and action may be taken by the High Court transferring a case from one court subordinate to it to any other court subordinate to that High Court. But where such courts are subordinate to different High Courts, it is only the Supreme Court (this B Court) which may pass an order of transfer. In other words, if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to that High Court to a court subordinate to other High Court. It is only the C Supreme Court (this Court) which may order the transfer."

Section 25 of the Code was considered to be containing both substantive as well as procedural law. Section 23, on the other hand was held to be merely a procedural or machinery provision. It was held that no order of transfer can be made D thereunder, stating:

"...If the case is covered by Section 25 of the Code, it is only that section which will apply for both the purposes, namely, for the purpose of making application and also for E the purpose of effecting transfer. On the contrary, reading of sub-section (3) of Section 23 of the Code in the manner suggested by the learned counsel for the respondent – wife would result in allowing inroad and encroachment on the power of this Court not intended by Parliament. Section F 23, therefore, in our considered view, must be read subject to Section 25 of the Code. The decisions taking a contrary view do not lay down correct law. We, therefore, overrule them..."

WHETHER TRIBUNAL IS A CIVIL COURT

G

15. The terms "Tribunal", "court" and the "civil court" have been used in the Code differently. All "courts" are "Tribunals" but all "Tribunals" are not "courts". Similarly all "civil courts" are "courts" but all "courts" are not "civil courts." It is not much in H dispute that the broad distinction between a "court" and a

"Tribunal" is whereas the decision of the "court" is final the decision of the "Tribunal" may not be.

The "Tribunal", however, which is authorized to take evidence of witnesses would ordinarily be held to be a "court" within the meaning of Section 3 of the Evidence Act, 1872. It includes not only Judges and Magistrates but also persons, except Arbitrators, legally authorized to take evidence. It is an inclusive definition. There may be other forums which would also come within the purview of the said definition.

In *State of M.P. v. Anshuman Shukla,* (2008) 7 SCC 487, this Court while holding certain authorities to be a 'court' within the meaning of the Evidence Act, noted thus:-

> "19. The definition of "courts" under the Evidence Act is not exhaustive (see *Empress v. Ashootosh Chuckerbutty.* Although the said definition is for the purpose of the said Act alone, all authorities must be held to be courts within the meaning of the said provision who are legally authorised to take evidence. [...]
>
> 21. In *Brajnandan Sinha v. Jyoti Narain* it has been held that any tribunal or authority whose decision is final and binding between the parties is a court. In the said decision, the Supreme Court, while deciding a case under the Court of Enquiry Act held that a court of enquiry is not a court as its decision is neither final nor binding upon the parties."

The same, however, would not mean that only because a Tribunal has 'all the trappings of a court', it would be a court. {See *Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd.* [1950 SCR 459] Para 7 and 27}.

Civil court is a body established by law for administration of justice. Different kinds of law, however exists, constituting different kinds of courts. Which courts would come within the definition of the civil court have been laid down under the Code

A of Civil Procedure itself. Civil Courts contemplated under Section 9 of Code of Civil Procedure find mention in Sections 4 and 5 thereof. Some suits may lie before the Revenue Court, some suits may lie before the Presidency Small Causes Courts. The Code of Civil Procedure itself lays down that the Revenue
B Courts would not be courts subordinate to the High Court.

We may notice that a learned Single Judge of the Calcutta High Court in *State Bank of India* (supra) and a Division Bench of the Delhi High Court in *Cofex Exports Ltd.* (supra) have held that the DRT is not a court and it exercises powers of a civil
C court only in respect of limited matters.

Civil Courts are constituted under statutes, like Bengal, Agra and Assam Civil Courts Act, 1887. Pecuniary and territorial jurisdiction of the civil courts are fixed in terms thereof.
D Jurisdiction to determine subject matter of suit, however, emanates from Section 9 of the Code. We would revert to the interpretation of the said provision vis-à-vis the provisions of the Act a little later.

E In *P. Sarathy v. State Bank of India* [(2000) 5 SCC 355], this Court opined that although there exists a distinction between a court and a civil court, but held that a Tribunal which has not merely the trappings of a court but has also the power to give a decision or a judgment which has finality and
F authoritativeness will be court within the meaning of Section 14 of the Limitation Act, 1963.

In the context of Section 29(2) of the Limitation Act, 1963 the term 'court' is considered to be of wide import.

G However, there again even for that purpose exists a distinction between a court and the civil court.

In *P. Sarathy v. State Bank of India,* (Supra) this Court has held :-

H **"12.** It will be noticed that Section 14 of the Limitation Act

does not speak of a "civil court" but speaks only of a "court". It is not necessary that the court spoken of in Section 14 should be a "civil court". Any authority or tribunal having the trappings of a court would be a "court" within the meaning of this section.

13. ... in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

We may, however, notice that in the context of applicability of Section 5 of the Limitation Act in regard to Arbitration Tribunal which was constituted in terms of a statutory provision has been referred to a three Judge Bench in *State of Madhya Pradesh and another v. Anushuman Shukla* [(2008) 7 SCC 487]. Be that as it may, the word 'civil court' vis-à-vis a court must be construed having regard to the text and context of the statute.

TRANSFER OF CASES

16. Learned Senior Counsel Shri Divan cited before us certain precedents beginning from *Bhagwati Devi v. M/s IS Goel,* 1983 [ACJ 123], till *Kususm Ignots & Alloys v. Punjab National Bank,* [(2005) 12 SCC 358] to bring home the point that this Court has regularly exercised power to transfer cases to and from Tribunals. The Senior Counsel in all cited eight precedents in this behalf. Amongst them are *Rajasthan State Road Transport v. Poonam Pahwa,* [(1997) 6 SCC 100]; *Dolly Kantibhai Patel v. Balu Tukaram,* [(2001) 9 SCC 723]; *Mohan Singh v. Saheb Singh,* [(2000) 9 SCC 403]; and *Kahlon v. K Paramasivam,* [(2004) 13 SCC 564] wherein this Court exercised the power under section 25 of the Code to transfer the case from one Motor Vehicles Tribunal to another. Similarly *Kusum Ignots* (supra) and *M/s Jai Shiva Cement v. Allahabad*

A *Bank*, [(JT) 2000 (8) SC 323], are the decisions where the Supreme Court exercised the power under section 25 of the CPC to transfer the case from one DRT to another.

These cases relate to transfer from one Tribunal to another Tribunal and not from a civil court to the Tribunal. No legal principle can be culled out therefrom.

The Courts therein had not gone into the question whether the Tribunal is a civil court or not. The provisions of the Code of Civil Procedure had not been adverted to. The power of C transfer under Section 25 of the Code was assumed sub silento without any discussion.

We are in agreement with the submissions of learned senior counsel Dr. Singhvi and Shri Rakesh Dwividi that those D decisions are clearly distinguishable on the facts of each case as they relate to transfer from one Tribunal to another and not from a civil court to a Tribunal.

It has also been pointed out by Mr. Dwividi that reliance placed by Mr. Desai on the cases cited by him and referred to E herein is misleading as the Head Notes of those cases are misleading. He argues that though the SCC refers to Section 25 of the CPC therein in regard to the power of transfer of the court, however, the text of the judgments is silent in regard thereto.

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We may hereinafter may make reference to the Head Notes of a few of them. The SCC Head Note to *Kahlon* (supra) reads as under:

G "Civil Procedure Code, 1908 – S. 25 – Motor accidents claim case filed by petitioner in town of place of work – due to 100 per cent disablement due to accident, petitioner quitting job and shifting back to home town – transfer of claim case to home town of petitioner, allowed"

H Similarly, the SCC Head note of *Mohan Singh* (supra)

reads: A

> "Civil Procedure Code, 1908 — S. 25 — Motor accident claim petition — Transfer of — Petitioner residing in Delhi and most of the evidence related to the case present in Delhi — Amended provision of the statute providing that the claim may be filed where the claimant resides — On facts and circumstances of the case, claim petition pending before Motor Accident Claims Tribunal, Muzaffarnagar transferred to the Tribunal concerned at Delhi — Motor Vehicles — Motor Vehicles Act, 1988, S. 166(2)" B C

Also the Head note of *Dolly Kantibhai Patel* (supra) reads thus:

> "Civil Procedure Code, 1908 — S. 25 — Motor accident claim petition — Transfer of — Petitioner (claimant) going back to USA, where he was living earlier — Petitioner requiring transfer of claim from MACT, Nasik to Vadodara (Gujarat) on the ground that his power-of-attorney holder was residing at Vadodara and all other occupants of vehicle, who were involved in accident, hailing from Vadodara — Also the insurance company having its branch office at Vadodara — In view of above reasons, transfer of claim petition allowed as prayed for" D E

However on close scrutiny of the text of judgments of this Court, we find that no reference therein has been made to Section 25 of the Code, or to any other provision under which the said power is exercised. It must in this context be noted that Head notes by the editors of a Reports are not a conclusive guide to the text of the judgment reported. They are made only for the convenience of the readers as a short summary to the text and for easy reference and at times they are misleading. F G

The *United States Supreme Court in United States v. Detroit Timber & Lumber Co.,* 200 U. S. 321, 337. H

A "In the first place, the headnote is not the work of the court, nor does it state its decision,-though a different rule, it is true, is prescribed by statute in some states. It is simply the work of the reporter, gives his understanding of the decision, and is prepared for the convenience of the B profession in the examination of the reports."

Reference may also be had to *Parmananda Pegu v. State of Assam,* [(2004) 7 SCC 779], wherein it was stated:

"21. The decision of this Court in *Chandrakant Chimanlal* C *Desai v. State of Gujarat* has created some difficulty in understanding the law which is otherwise so well settled. The learned Judges imported the observations which were made in *Kashmira Singh v. State of M.P.* in the context of evidentiary value of the confession of co-accused and D applied them to the case of retracted confession. It appears that the learned Judges went by the headnote in the AIR6 which opens up with the sentence: (AIR p. 159) "The confession of an accused person...." However, in the text of the judgment it is crystal clear that the entire E discussion and the statement of law was only with reference to the confession of the co-accused. While clarifying that the confession of the co-accused is not evidence in the ordinary sense of the term as pointed out by the Privy Council, this Court observed in *Kashmira* F *Singh* case that such a confession cannot be made the foundation of a conviction and can only be used in support of other evidence.

22. In *Chimanlal* case the learned Judges, after referring to the headnote portion of *Kashmira Singh* in AIR 1952 G SC 159 proceeded to apply the test applicable to the confession of the co-accused to a case of retracted confession.

23. In view of the error in comprehending the scope of the H decision in *Kashmira Singh* case the decision in

Chimanlal case falls close to the category of decisions rendered per incuriam."

Reliance has also been placed on a decision of this Court in *Rajasthan State Road Transport* (supra) wherein a Motor Accident Claims Tribunal was held to be a civil court purported to be on the basis of a decision in *Bhagwati Devi* (supra) wherein the principles contained in Order XXIII of the Code had been held to be applicable to the Motor Accident Claims Tribunal.

A provision in the Code which is benevolent in character and sub serve the social justice doctrine in a situation of that nature has been applied, but the same, in our opinion, by itself would not make a Tribunal a civil court. No reason has been assigned as to why a Tribunal has been considered to be a civil court for the purpose of Section 25 of the Act. The court appears to have proceeded on the basis that an appeal before the High Court shall lie in terms of Section 173 of the Motor Vehicles Act, 1988 from an Award passed by the Tribunal, thus showing that it is a part of the hierarchy of the civil court. Motor Accident Claims Tribunal, thus, is a court subordinate to the High Court. No appeal against the judgment of the Debt Recovery Tribunal lies before the High Court unlike under the Motor Vehicles Act, 1988. The two Tribunals are differently structured and have been established to serve totally different purposes.

If the Tribunal was to be treated to be a civil court, the debtor or even a third party must have an independent right to approach it without having to wait for the Bank or Financial Institution to approach it first. The continuance of its counter-claim is entirely dependant on the continuance of the applications filed by the Bank. Before it no declaratory relief can be sought for by the debtor. It is true that claim for damages would be maintainable but the same have been provided by way of extending the right of counter-claim.

A Debt Recovery Tribunal cannot pass a decree. It can issue only recovery certificates. [See Sections 19(2) and 19(22) of the Act].

The power of the Tribunal to grant interim order is attenuated with circumspection. {See *Dataware Design Labs. v. State Bank of India,* {[2005] 12 Comp. Cas. 176 (Ker) at 184}.

Concededly in the proceeding before the Debt Recovery Tribunal detailed examination; cross-examinations, provisions C of the Evidence Act as also application of other provisions of the Code of Civil Procedure like interrogatories, discoveries of documents and admission need not be gone into. Taking recourse to such proceedings would be an exception. Entire focus of the proceedings before the Debt Recovery Tribunal D centers round the legally recoverable dues of the bank.

Should we adopt the principle of purposive interpretation so as to hold that the DRT would be a Civil Court? We have noticed hereinbefore that Civil Courts are created under different Acts. They have their own hierarchy. They necessarily E are subordinate to the High Court. The appeals from their judgment will lie before a superior court. The High Court is entitled to exercise its power of revision as also superintendence over the said courts.

F For the aforementioned purpose, we must bear in mind the distinction between two types of courts, viz., civil courts and the courts trying disputes of civil nature. Only because a court or a tribunal is entitled to determine an issue involving civil nature, the same by itself would not lead to the conclusion that G it is a civil court. For the said purpose, as noticed hereinbefore, a legal fiction is required to be created before it would have all attributes of a civil court. The Tribunal could have been treated to be a civil court provided it could pass a decree and it had all the attributes of a civil court including undertaking of a full-H fledged trial in terms of the provisions of the Code of Civil

Procedure and/or the Evidence Act. A

It is now trite law that jurisdiction of a court must be determined having regard to the purpose and object of the Act. If the Parliament, keeping in view the purpose and object thereof thought it fit to create separate tribunal so as to enable B the banks and the financial institutions to recover the debts expeditiously wherefor the provisions contained in the Code of Civil Procedure as also the Evidence Act need not necessarily be resorted to, in our opinion, by taking recourse to the doctrine of purposive construction, another jurisdiction cannot be C conferred upon it so as to enable this Court to transfer the case from the civil court to a tribunal.

It is difficult to accept the submission of Mr. Diwan that if such an interpretation is accepted, the same would remove the anomaly which would otherwise be present in the cases where D recovery is for a sum below Rs. 10 lakhs and for those where recovery is for a sum of Rs. 10 lakhs or more. Parliament created such an anomaly, if any, knowingly. Expeditious recovery of the debts above Rs. 10 lakhs is the object of the Act. Casus omissus, if any, it is well-known cannot be supplied E by the court.

In *Raghunath Rai Bareja* (supra), this Court has clearly held:

> "...Assuming there is a defect or an omission in the words F used by the legislature, the court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result..."

Would the tribunal answer the description of the civil court G must be considered having regard to the provisions of the Act constituting civil court as also the provisions of the Code of Civil Procedure?

We have held that the Tribunals are neither civil courts nor courts subordinate to the High Court. The High Court ordinarily H

A can be approached in exercise of its writ jurisdiction under Article 226 or its jurisdiction under Article 227 of the Constitution of India. The High Court exercises such jurisdiction not only over the courts but also over the Tribunals. Appellate tribunals have been constituted for determining the appeals B from judgments and orders of the Tribunal. The principles of purposive construction, therefore, in our opinion, are not attracted in the instant case. Had the Parliament intended to make the Tribunals civil courts, a legal fiction could have been raised. There are statutes like the Andhra Pradesh Land C Grabbing Act where such a legal fiction has been raised. {See *V. Laxminarasamma v. A. Yadaiah (Dead) and Ors.*, [2009 (3) SCALE 685]}.

Whereas the doctrine of purposive construction is a salutary principle, the same cannot be extended to a case which D would lead to an anomaly. It can inter alia be resorted to only when difficulty or doubt arises on account of ambiguity. It is to be preferred when object and purpose of the Act is required to be promoted.

E For the foregoing reasons, we are of the opinion that the decisions of this Court laying down the principles of purposive interpretation, whereupon strong reliance has been placed by Mr. Divan, viz., *New India Assurance Company Ltd. v Nusli Neville Wadia and Another* [(2008) 3 SCC 279], *Dilip S.* F *Dahanukar v. Kotak Mahindra Co. Ltd. and Another* [(2007) 6 SCC 528], *South Eastern Coalfields Ltd. v. CCET, MP* [(2006) 6 SCC 340] and *Uco Bank v. Rajinder Lal Capoor* [(2008) 5 SCC 257], cannot have any application. On the other hand, if the principles of purposive interpretation are resorted G to, the same would amount to rewriting of the statute.

In *Sri Ram Saha v. State of West Bengal and Ors.* [JT 2004 (9) SC 136 : (2004) 11 SCC 497], this Court held:

"19. It is well-settled principle of interpretation that a H statute is to be interpreted on its plain reading; in the

absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, courts will interpret such a provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a provision so as to advance the cause for which the enactment is brought into force. If two interpretations are possible, the one which promotes or favours the object of the Act and purpose it serves, is to be preferred. At any rate, in the guise of purposive interpretation, the courts cannot rewrite a statute. A purposive interpretation may permit a reading of the provision consistent with the purpose and object of the Act but the courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation."

[See also *D.P.P. v. Bhagwan* (1970) 3 All ER 97].

CONCLUSION

17. The Tribunal was constituted with a specific purpose as is evident from its statement of objects. The preamble of the Act also is a pointer to that too. We have also noticed the scheme of the Act. It has a limited jurisdiction. Under the Act, as it originally stood, did not even have any power to entertain a claim of set off or counter-claim. No independent proceedings can be initiated before it by a debtor. A debtor under the common law of contract as also in terms of the loan agreement may have an independent right. No forum has been created for endorsement of that right. Jurisdiction of a civil court as noticed hereinbefore is barred only in respect of the matters which strictly come within the purview of Section 17 thereof and not beyond the same. The Civil Court, therefore, will continue to have jurisdiction. Even in respect of set off or counter-claim, having regard to the provisions of sub-sections (6) to (11) of

A Section 19 of the Act, it is evident :-

(a) That the proceedings must be initiated by the bank

(b) Some species of the remedy as provided therein would be available therefor.

B

(c) In terms of sub-section (11) of Section 19, the bank or the financial institution is at liberty to send a borrower out of the forum.

C (d) In terms of the provisions of the Act, thus, the claim of the borrower is excluded and not included.

(e) In the event the bank withdraws his claim the counter-claim would not survive which may be contrasted with Rule 6 of Order VIII of the Code.

D

(f) Sub-section (9) of Section 19 of the Act in relation thereto has a limited application.

(g) The claim petition by the bank or the financial institution must relate to a lending/borrowing transaction between a bank or the financial institution and the borrower.

E

(h) The banks or the financial institutions, thus, have a primacy in respect of the proceedings before the

F Tribunal.

(i) An order of injunction, attachment or appointment of a receiver can be initiated only at the instance of the bank or the financial institution. We, however, do not mean to suggest that a Tribunal having a

G plenary power, even otherwise would not be entitled to pass an order of injunction or an interim order, although ordinarily expressly it had no statutory power in relation thereto.

H (j) It can issue a certificate only for recovery of its

dues. It cannot pass a decree.

(k) Although an appeal can be filed against the judgment of the Tribunal, pre-deposit to the extent of 75 % of the demand is imperative in character.

(l) Even cross-examination of the witnesses need not be found to be necessary.

(m) Subject to compliance of the principle of natural justice it may evolve its own procedure.

(n) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code. 'Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.'[See *Industrial Credit and Investment Corpn. of India Ltd. v. Grapco Industries Ltd.,* (1999) 4 SCC 710]

The Tribunal, therefore, would not be a Civil Court.

TRIBUNAL WHETHER IS SUBORDINATE TO THE HIGH COURT:

18. The Court would be subordinate to High Court in terms of the provisions of the Code only in the event it comes within the purview of the hierarchy of the court as contained in Section 3 of the Act. This, however, does not mean that even when the Presiding Judge or the Presiding Officer of the Court exercises power conferred upon it under a statute still then it would not be a court subordinate to the High Court. A court while adjudicating a dispute under the Employees State Insurance Act or a Reference Court under the Land Acquisition Act, Election Tribunal or a Tribunal acting as a Motor Vehicles

A Accident Claim Tribunal, while exercising revisional jurisdiction from an order passed by the Executive Magistrate under the Code or exercising an appellate power under special statutes like Municipal Acts would still be a court subordinate to the High Court. However, for the aforementioned purpose the Presiding B Officer must be holding a Court which would otherwise come within the purview of the hierarchy of the courts.

In *N.P. Balakrishanan v. P.M.R. Mariyumma,* [AIR 1997 Kerala 89], the High Court has held :-

C "In view of the discussions it is clear that even though Rent Control Court under the Rent Control Act is a 'Court' and is not a persona designate it is not a Civil Court for the purpose for the provisions of S. 115 of the CPC. Therefore, against an interim order of the Rent Control D Court no revision petition will lie. We are not considering whether an appeal will lie against the interim order in question or whether a petition under Art. 227 of the Constitution is maintainable."

E In *M/s. Brooke Bond India Ltd. v. Union of India and others,* [AIR 2001 AP 526] the Andhra Pradesh High Court has held:-

"The contention urged by the counsel for appellant that the Railway Claims Tribunal is a civil Court cannot be F accepted. Merely because Section 18(3) of the Act provides that the Claims Tribunal, for the purpose of discharging the functions under the Act, shall have the same powers as are vested in the civil Court under the Code of Civil Procedure, 1908 and S. 25 provides that the G proceedings before the Tribunal shall be deemed to be 'judicial proceedings' as contemplated under Sections 193, 210 and 228, IPC, they do not make the Railway Claims Tribunal a 'Civil Court'.

H In *Devendra Somabhai Naik v. M/s. Accurate Transheet*

Pvt. Ltd. [AIR 2003 Gujarat 141] the High Court has held :-

> "No doubt, Article 137 deals with filling of applications, but then the applications, which are contemplated to be filed, are the applications filed before the civil Court. The appellant is also not successful in convincing this Court to hold that the 'Copyright Board' is a 'Civil Court'. In view of the aforesaid discussion, the present appeal fails. The Court has not found any error in the order under challenge. The appeal is dismissed with no order as to costs.

In *State Bank of India v. Madhumita Construction (Pvt.) Ltd. and others,* [AIR 2003 Cal 7], the Calcutta High Court has held :-

> "13. ... On the other hand, it is a question as to whether this Court had jurisdiction or not. If the DRT has exclusive jurisdiction and this Court ceases to have jurisdiction, in that event, it is not a question of granting injunction restraining the respondent Nos. 53 to 57 from proceeding with the same. But it is a case whether this Court has jurisdiction to proceed with or not. If it has jurisdiction, in that event, it can very much grant the injunction. If it has no jurisdiction, it cannot do so. Even if it is assumed that Section 41(b) applies, still then DRT as such is not a Court subordinate to this Court. It does not fall within the hierarchy of the Courts as provided in the Bengal, Agra and Assam Civil Courts Act, 1887. The Tribunal constituted under the DRT Act is not a Court. It is a Tribunal having the trappings of a Court. A Tribunal with trappings of Court cannot be equated with a Court as is understood from the expression "Court". A Court is a body established by law for the administration of justice by Judges or Magistrates. This definition may include a Tribunal as well. Inasmuch as, it is also a body constituted or established by law for administration of justice. But, when it comes to the distinction between Court and Tribunal, then the Court as it understood is different from a Tribunal. The word "Court",

A however, has not been defined anywhere in any law. Different kinds of Courts have since been established under different laws. The hierarchy of the Court as established under Bengal, Agra and Assam Civil Court Act are Courts in respect of which the Code of Civil
B Procedure is applicable and the jurisdiction is open. Section 4 and 5 CPC also spells out Courts in the context of applicability of CPC. Under Section 9 of CPC. All suits of civil nature are triable by a Court unless cognizance of a particular kind of suit is expressly or impliedly barred.
C There are certain kinds of suits which are triable by revenue Courts or Provincial or Presidencies Small Cause Court. The subordination of the Courts is determined under Section 3, CPC on the basis of the provisions of Code of Civil Procedure applicable to it having regard to the
D provisions contained in Bengal, Agra and Assam Civil Courts Act."

In *Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd.*, [(2007) 6 SCC 236], this Court has held :-

E "76. Section 31 of the RDB Act clearly refers to transfer of "every suit or other proceeding pending before any court". The word "court", in the context of the RDB Act, signifies "civil court". It is clear that the Registrar, or an officer designated by him or an arbitrator under Sections
F 61, 62, 70 and 71 of the APCS Act, 1964 and under Section 91 and other provisions of Chapter IX of the MCS Act, 1960 are not "civil courts"

77. In *Harinagar Sugar Mills v. Shyam Sundar Jhunjhunwala* this Court held: (AIR p. 1680, para 32)

G

"By 'courts' is meant courts of civil judicature and by 'tribunals', those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to
H decide such controversies. This is undoubtedly one of the

attributes of the State, and is aptly called the judicial power of the State." A

In *Rama Rao v. Narayan* it was held that the nominee of Registrar appointed under Section 95 of the Maharashtra Cooperative Societies Act, 1961 is not a "court" within the meaning of Section 195 Cr PC. B

In *Kihoto Hollohan v. Zachillhu* it was held that: (SCC p. 706, para 98)

" 'All tribunals are not courts, though all courts are tribunals.' The word 'courts' is used to designate those tribunals which are set up in an organised State for the administration of justice." C

In *Supreme Court Legal Aid Committee v. Union of India* it was held: (SCC p.745, para 14) D

"14. It is common knowledge that a 'court' is an agency created by the sovereign for the purpose of administering justice. It is a place where justice is judicially administered. It is a legal entity." E

EXCLUSION OF JURISDICTION MUST BE EXPRESS

19. The Civil Court indisputably has the jurisdiction to try a suit. If the suit is vexatious or otherwise not maintainable action can be taken in respect thereof in terms of the Code. F
But if all suits filed in the Civil Courts, whether inextricably connected with the application filed before the DRT by the banks and financial institutions are transferred, the same would amount to ousting the jurisdiction of the Civil Courts indirectly. Suits filed by the debtor may or may not be counter claims to G
the claims filed by banks or financial institutions but for that purpose consent of the plaintiff is necessary. It is furthermore difficult to accept the contentions of the respondents that the statutory provisions contained in section 17 and 18 of the DRT Act have ousted the jurisdiction of the civil court as the said H

A provisions clearly state that the jurisdiction of the civil court is barred in relation only to applications from banks and financial institutions for recovery of debts due to such banks and financial institutions.

B A civil court is entitled to decide the respective claims of the parties in a suit. It must come within the purview of the hierarchy of courts as indicated in Section 3 of the Code. It will have jurisdiction to determine all disputes of civil nature unless the same is barred expressly by a statute or by necessary implication. Although some arguments have been advanced C before us whether having regard to the provisions of Sections 17 and 18 of the Act the civil court jurisdiction is completely ousted, we are of the view that the jurisdiction of the civil court would be ousted only in respect of the matters contained in Section 18 which has a direct co-relation with Section 17 D thereof, that is to say that the matter must relate to a debt payable to a bank or a financial institution. The application before the Tribunal would lie only at the instance of the bank or the financial institution for the recovery of its debt. It must further be noted in this respect that had the jurisdiction of the civil courts E been barred in respect of counterclaim also, the statute would have said so and Sections 17 and 18 would have been amended to introduce the provision of counterclaim. We may in this context place on record the following observations from *Indian Bank* (supra):

F

> "14. Section 9 of the Code of Civil Procedure provides that the courts shall have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred.
>
> G 15. It is evident from Sections 17 and 18 of the Debts Recovery Act that civil court's jurisdiction is barred only in regard to applications by a bank or a financial institution for recovery of its debts. The jurisdiction of civil courts is not barred in regard to any suit filed by a borrower or any H other person against a bank for any relief.[...]

16. [...]What is significant is that Sections 17 and 18 have not been amended. Jurisdiction has not been conferred on the Tribunal, even after amendment, to try independent suits or proceedings initiated by borrowers or others against banks/financial institutions, nor the jurisdiction of civil courts barred in regard to such suits or proceedings.

It must be remembered that the jurisdiction of a civil court is plenary in nature. Unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits.

In *Dhulabhai v. State of M.P.,* [(1968) 3 SCR 662], this Court opined:-

"35. [...] The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

[...] (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

A In *Dwarka Prasad Agarwal v. Ramesh Chander Agarwal,* [(2003) 6 SCC 220]

> **"19.** A bare perusal of the aforementioned provisions leaves no manner of doubt that thereby the jurisdiction of the civil court has not been ousted. The civil court, in the instant case, was concerned with the rival claims of the parties as to whether one party has illegally been dispossessed by the other or not. Such a suit, apart from the general law, would also be maintainable in terms of Section 6 of the Specific Relief Act, 1963. In such matters the court would not be concerned even with the question as to the title/ownership of the property."

Therein five principles were laid down stating :-

> **"22.** The dispute between the parties was eminently a civil dispute and not a dispute under the provisions of the Companies Act. Section 9 of the Code of Civil Procedure confers jurisdiction upon the civil courts to determine all disputes of civil nature unless the same is barred under a statute either expressly or by necessary implication. Bar of jurisdiction of a civil court is not to be readily inferred. A provision seeking to bar jurisdiction of a civil court requires strict interpretation. The court, it is well settled, would normally lean in favour of construction, which would uphold retention of jurisdiction of the civil court. The burden of proof in this behalf shall be on the party who asserts that the civil court's jurisdiction is ousted. (See *Sahebgouda v. Ogeppa,* (2003) 6 SCC 151.) Even otherwise, the civil court's jurisdiction is not completely ousted under the Companies Act, 1956."

In *Nagri Pracharini Sabha v. Vth Addl. Distt. and Sessions Judge,* [1991 Supp (2) SCC 36]

> "2. A litigant having a grievance of a civil nature has, independently of any statute, a right to institute a suit in the

civil court unless its cognizance is either expressly or impliedly barred. The position is well-settled that exclusion of jurisdiction of the civil court is not to be readily inferred and such exclusion must be either expressly or implied."

In *Ramesh Chand Ardawatiya v. Anil Panjwani,* [(2003) 7 SCC 350] this Court opined :-

"19. ... Where there is a special tribunal conferred with jurisdiction or exclusive jurisdiction to try a particular class of cases even then the civil court can entertain a civil suit of that class on availability of a few grounds. An exclusion of jurisdiction of the civil court is not to be readily inferred. (See *Dhulabhai v. State of M.P.*) "

Power to create or enlarge jurisdiction is legislative in character. Similarly, right of revision or appeal is normally a creature of statute. In *Rajasthan SRTC v. Zakir Hussain,* [(2005) 7 SCC 447] this Court has held:-

"21. It is a well-settled principle of law as laid down by this Court that if the court has no jurisdiction, the jurisdiction cannot be conferred by any order of court. This Court in the case of *A.R. Antulay v. R.S. Nayak,* AIR paras 40 to 42 wherein it is, inter alia, held and observed as under: (SCC pp. 650-51, paras 38-40)

... ...

39[41]. ... The power to create or enlarge jurisdiction is legislative in character.... Parliament alone can do it by law and no court, whether superior or inferior or both combined can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal.

... ... "

A The Act, although, was enacted for a specific purpose but having regard to the exclusion of jurisdiction expressly provided for in Sections 17 and 18 of the Act, it is difficult to hold that a civil court's jurisdiction is completely ousted. Indisputably the banks and the financial institutions for the purpose of B enforcement of their claim for a sum below Rs. 10 lakhs would have to file civil suits before the civil courts. It is only for the claims of the banks and the financial institutions above the aforementioned sum that they have to approach the Debt Recovery Tribunal.

C It is also without any cavil that the banks and the financial institutions, keeping in view the provisions of Sections 17 and 18 of the Act, are necessarily required to file their claim petitions before the Tribunal. The converse is not true.

D Debtors can file their claims of set off or counter-claims only when a claim application is filed and not otherwise. Even in a given situation the banks and/or the financial institutions can ask the Tribunal to pass an appropriate order for getting the claims of set-off or the counter claims, determined by a civil E court. The Tribunal is not a high powered tribunal. It is a one man Tribunal. Unlike some Special Acts, as for example Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 it does not contain a deeming provision that the Tribunal would be deemed to be a civil court.

F The liabilities and rights of the parties have not been created under the Act. Only a new forum has been created. The banks and the financial institutions cannot approach the Tribunal unless the debt has become due. In such a contingency, indisputably a civil suit would lie.

G There is a possibility that the debtor may file preemptive suits and obtain orders of injunction, but the same alone, in our opinion, by itself cannot be held to be a ground to completely oust the jurisdiction of the civil court in the teeth of Section 9 of H the Code. Recourse to the other provisions of the Code will

have to be resorted to for redressal of his individual grievances. A

It is also difficult to accept the contention of leaned counsel for the banks that the civil court's jurisdiction is not in consonance with the Act. We do not find the same to be correct.

On the ground of inconsistency in the procedures contained in the two Acts alone, the jurisdiction of the civil court cannot be said to have been ousted. B

Reliance has been placed by Mr. K.K. Venugopal, learned senior counsel for the bank on *Vijay Kumar Sharma v. State of Karnataka,* (1990) 2 SCC 562, wherein this Court has held:- C

> **"44.** The court then referred to its earlier decision in *Deepchand v. State of U.P.* and pointed out that in that case the following principles were laid down to ascertain whether there is repugnancy or not: D
>
> 1. Whether there is direct conflict between the two provisions;
>
> 2. whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the earlier law; E
>
> 3. whether the two laws occupy the same field.
>
> F
>
> The court then referred to *Sutherland on Statutory Construction* (Vol. 1 3rd edn., p. 486) on the question of "repeal of special and local statutes by general statutes".
>
> It was further stated :- G
>
> **"46.** What is important from our point of view, is the view taken in that case that when repugnancy is alleged between the two statutes, it is necessary to examine whether the two laws occupy the same field, whether the new or the later statute covers the entire subject matter of the old, H

A whether legislature intended to lay down an exhaustive code in respect of the subject matter covered by the earlier law so as to replace it in its entirety and whether the earlier special statute can be construed as remaining in effect as a qualification of or exception to the later general law, since
B the new statute is enacted knowing fully well the existence of the earlier law and yet it has not repealed it expressly. The decision further lays down that for examining whether the two statutes cover the same subject matter, what is necessary to examine is the scope and the object of the
C two enactments, and that has to be done by ascertaining the intention in the usual way and what is meant by the usual way is nothing more or less than the ascertainment of the dominant object of the two legislations.

D ... .

48... The legislative intent is clear. Since, further, the Parliament had enacted the later statute knowing fully well the existence of the earlier statute and yet it did not expressly repeal it, it will be presumed that the Parliament
E felt that there was no need to repeal the said statute."

However, in that case itself it has been held that repugnancy and inconsistency is synonymous.

Furthermore in a case of this nature where the banks itself
F have filed applications for transfer, the jurisdiction of the civil court must be presumed.

Submission of Mr. Desai that this Court can direct the Tribunal to follow the provisions of the Code, in our opinion,
G cannot be accepted. Such a direction would be in the teeth of the provisions of the Act.

Reliance placed by the learned counsel on sub-section (2) of Section 22 of the Act to contend that the provisions of the Code are applicable, in our opinion, militates against the said
H contention. Sub-section (2) of Section 22 deals with

applicability of the provisions of the Code in a limited manner. Sub-section (3) raises a legal fiction that the proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for all the purposes of Section 196 of the Indian Penal Code, 1860. The very fact that a legal fiction has been created and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for purposes of Section 195 and Chapter XXVI of the Code of Civil Procedure, 1908, itself suggests that the Parliament did not intend to take away the jurisdiction of the civil court. In any event, the said legal faction has a limited application. Its scope and ambit cannot be extended.

In *Bharat Bank Ltd.* (supra) it has clearly been held that although the labour court may have all the trappings of a court, but it is still not a court.

We may notice that some of the Parliamentary statutes, like the Family Courts Act confers all the powers on Family Courts which are essential for discharging the functions of Civil Court under the Code of Criminal Procedure.

We accept that disposal of a civil suit takes a long time. But indisputably remedy of summary and speedy trial by itself would not be sufficient to oust the jurisdiction of the civil court. Had the intention of the Parliament been so, it could have expressly said so. Casus omissus, as is well known, cannot be supplied.

VESTED RIGHT OF APPEAL

20. Another aspect of the matter also cannot be lost sight of. A plaintiff of a suit will have a vested right of appeal. The said right would be determined keeping in view the date of filing of the suit. Such a right of appeal must expressly be taken away. An appeal is the "right of entering a superior court, and invoking its aid and interposition to redress the error of the court below" and "though procedure does surround an appeal the

A central idea is a right". The right of appeal has been recognized by judicial decisions as a right which vests in a suitor at the time of institution of original proceedings. The Privy Council in *Colonial Sugar Refining Company v. Irving,* [(1905) AC 369 (PC)] noted that " to deprive a suitor in a pending action of an B appeal to a superior tribunal which belonged to him as of right, is a very different thing from regulating procedure"

When a person files a civil suit his right to prosecute the same in terms of the provisions of the Code as also his right of appeal by way of first appeal; second appeal etc. are C preserved. Such rights cannot be curtailed, far less taken away except by reason of an express provision contained in the statute. Such a provision in the statute must be express or must be found out by necessary implication.

D In *Garikapati Veeraya v. N. Subbiah Choudhry,* [1957 SCR 488], this Court opined :-

"23. From the decisions cited above the following principles clearly emerge:

E *(i)* That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

F *(ii)* The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career G of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and H although it may be actually exercised when the adverse

judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

[See also *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr.*, (2007) 6 SCC 528]

The Code not only contains procedural provisions but also substantive rights ; right of appeal is one of them. A forum of appeal is determined in terms of the provisions of the Code having regard to the pecuniary jurisdiction of the Court as may be notified by the appropriate Government from time to time. A suitor has the right to maintain a first appeal. A second appeal also is maintainable before a High Court, subject of course to the effect that questions of law must be there for the court's consideration. For the said purpose no pre-deposit is required to be made, as is necessary in terms of the Act, that 75% of the awarded amount is required to be deposited, subject of course, to an order to the contrary, which may be passed by the Debt Recovery Appellate Tribunal. Such a right of conditional appeal, in our opinion, curtails party's right to maintain an appeal as a matter of right. While we say so, we are not oblivious of the fact that in terms of Order XLI Rule 1 of the Code, in the event of passing of a money decree the amount is required to be deposited. The said provision, however, has been held to be directory. Order XLI Rule 1 is required to be read with Order XLI Rule 5 thereof. {See *Sihor Nagar Palika Bureau v. Bhabhlubhai Virabhai & Co.*, [(2005) 4 SCC 1], *Malwa Strips Pvt. Ltd. v. Jyoti Limited* [(2009) 2 SCC 426]}

More recently in *Transmission Corporation of A.P. v. Ch. Prabhakar and Ors.*, (2004) 5 SCC 551 this court similarly opined:

A "....The right of appeal is a substantive right which is really a step in series of proceedings all connected by an intrinsic unity and is to be regarded as one legal proceeding and further being a vested right such a right to enter the superior court accrues to the litigant and exists as on and from the B date the lis commences...."

A civil suit may also be maintainable before Original Side of the High Court in terms of the statutes under which the High Courts are constituted or in terms of the provisions of the Letters Patent. An intra court appeal is available against a C decree passed by a learned Single Judge of a High Court in a suit filed before it.

In the event, however, if a civil suit is transferred to the Debt Recovery Tribunal, the plaintiff would be deprived of his right D in relation to the procedural mechanism as contained in the Code as also the Evidence Act. His right of appeal would also stand curtailed. While exercising the power of transfer, the High Court and this Court would thus be curtailing the right of a suitor indirectly which could not be done directly. It clearly establishes E the Parliamentary intent that only civil suits are subject matter of inter State transfer from one civil court to another civil court. If such a power is exercised, all the rights of the plaintiff remain intact, no right is taken away and no right is diluted.

F **INHERENT JURISDICTION**

21. Section 151 of the Code of Civil Procedure does not confer any extraordinary jurisdiction on this Court. It saves the inherent power of all the civil courts, i.e., from the trial judge to this Court. Thus, where a matter has expressly been provided G for in the body of the Code, ordinarily inherent power shall not be resorted to. The underlying principle of Section 151 of the Code ordinarily would apply where the area is grey. It indisputably confers incidental powers. It confers power on a court to do something which in absence of any provision H contrary thereto would lead to advancement of justice and

prevent injustice. The power to transfer one case from one court to another or from one tribunal to another having jurisdiction of a different State is an extraordinary jurisdiction. For exercising the said power, this Court has to take into consideration a large number of factors. Such a power is to be exercised if exceptional situation arises and not otherwise.

In *Padma Sen and Another v. The State of Uttar Pradesh* [AIR 1961 SC 218], this Court, having regard to the provisions contained in Order XXVI, Rule 9 of the Code of Civil Procedure vis-à-vis Order XXXVIII, Rule 5, Order XXXIX, Rules 1(b) and 7 thereof, categorically held that the court has no inherent power under Section 151 of the Code of Civil Procedure to appoint a Commissioner to seize accounts books in the possession of the plaintiff upon an application by the defendant that his apprehension that they would be tampered with, stating:

> **"10.** The defendants had no rights to these account books. They could not lay any claim to them. They applied for the seizure of these books because they apprehended that the plaintiff might make such entries in those account books which could go against the case they were setting up in Court. The defendants' request really amounted to the Court's collecting documentary evidence which the defendants considered to be in their favour at that point of time. It is no business of the Court to collect evidence for a party or even to protect the rival party from the evil consequences of making forged entries in those account books. If the plaintiff does forge entries and uses forged entries as evidence in the case, the defendants would have ample opportunity to dispute those entries and to prove them forgeries.
>
> **11.** We are therefore of opinion that the Additional Munsif had no inherent power to pass the order appointing a Commissioner to seize the plaintiff's account books. The order appointing Sri Raghubir Pershad as Commissioner

A for this purpose was therefore an order passed without jurisdiction and was therefore a null and void order."

The said decision, we are not oblivious, has been distinguished by this Court in *Manohar Lal Chopra v. Rai* B *Bahadur Rao Raja Seth Hiralal* [AIR 1962 SC 527] in a case for grant of injunction stating that Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure is not exhaustive, stating:

"22. In the above case, this Court did not uphold the order of the civil court, not coming under the provisions of Order C 26, appointing a commissioner for seizing the account books of the plaintiff on the application of the defendants. The order was held to be defective not because the Court had no power to appoint a commissioner in circumstances not covered by Section 75 and Order 26, but because the D power was exercised not with respect to matters of procedure but with respect to a matter affecting the substantive rights of the plaintiff. This is clear from the further observations made at p. 887. This Court said:

E "The question for determination is whether the impugned order of the Additional Munsif appointing Sri Raghubir Pershad Commissioner for seizing the plaintiff's books of account can be said to be an order which is passed by the Court in the exercise of its inherent powers. The inherent powers saved by Section 151 of the Code F are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders which would affect such G rights of a party. Such powers cannot come within the scope of inherent powers of the Court in matters of procedure, which powers have their source in the Court possessing all the essential powers to regulate its practice and procedure."

H

The Plaintiff furthermore is the *dominus litus*. He may institute a suit having regard to the provisions contained in Sections 16 to 20 of the Code of Civil Procedure in any civil court within whose jurisdiction inter alia a cause of action arises. If the jurisdiction of the civil court is not barred or if he having regard to common law principle is entitled to maintain an action in two different forums, he may choose one of them. [See *Rajasthan State Road Transport Corporation and Anr. v. Bal Mukund Bairwa*, 2009 (2) SCALE 428]

A debtor having regard to the provisions of the DRT Act would not be entitled to maintain an action before the Tribunal. If a suit is to be transferred from a civil court to a tribunal, he would loose some rights including the right to prefer an appeal before a higher court in terms of Sections 96 and 100 of the Code of Civil Procedure.

Mr. Diwan, however, has strongly placed reliance upon *Union of India and Another v. Delhi High Court Bar Association and Others* [(2002)4 SCC 275] wherein it was observed that the tribunals have become an essential part of the judicial system in the country. Such observations were made keeping in view the provisions of Articles 323A and 323B of the Constitution of India. The logical extension of the said observations would not lead to a conclusion that the tribunals are either civil courts or this Court would be entitled to exercise its inherent power for transfer of a civil suit to a tribunal.

We may place on record that in *Durgesh Sharma* (supra) this Court has clearly held that the provisions of Sections 22 to 25 of the Code of Civil Procedure are exhaustive in nature. If that be so, inherent power of the court could clearly not be invoked.

Reliance has also been placed on *M/s. Ram Chand and Sons Sugar Mills Private Ltd. v. Kanhayalal Bhargava and Others* [AIR 1966 SC 1899] wherein it has been held:

A "Having regard to the said decisions, the scope of the inherent power of a court under Section 151 of the Code may be defined thus: The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be
B exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication
C that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a
D suitable order to prevent the abuse of the process of the Court."

We, however, are of the opinion that the principles laid down therein cannot be said to have any application in the
E instant case as it would bear repetition to state that by reason thereof the court would not be entitled to denude a suitor of his right of appeal and other substantive rights.

We are also unable to persuade ourselves to hold that the
F right of transfer of a case being procedural in nature should be construed liberally. By reason thereof, substantive right of a party cannot be taken away. While accepting that the rules of procedures are intended to provide justice and not to defeat it as has been held by this Court in *N.T. Veluswami Thevar v.*
G *G. Raja Nainar and others* [AIR 1959 SC 422] and *M/s. Lakshmiratan Engineering Works Ltd. v. Asst. Commissioner (Judicial) I., Sales Tax, Kanpur Range, Kanpur and another* [AIR 1968 SC 488], that the court must bear in mind that it would not cause injustice to any of the parties thereby.

H Reliance has also been placed on *Industrial Investment*

Bank of India Ltd. v. Marshal's Power & Telecom (I) Ltd. and Another [(2007) 1 SCC 106] and *Durga Hotel Complex v. Reserve Bank of India and Others* [(2007) 5 SCC 120]. Both the aforementioned cases have been determined by a Bench which has decided *Ranjan Chemicals* (supra). Those cases related to the contentions raised before the Banking Ombudsman. The Bench held that the appellants therein could make all their claims before the DRT while defending the claim of the bank, including the ones he had put forward before the Banking Ombudsman.

We are not concerned with such a contention herein. In any event, in view of our findings that we are bound to follow *Indian Bank* (supra), this argument has no force.

ARTICLE 142 ISSUE

22. Indisputably, the power of this Court under Articles 139A and 142 of the Constitution of India is a wide and extensive one. This Court may resort thereto to do complete justice. While doing so, this Court would be entitled to impose conditions.

Whether such a power should be exercised or not is the question.

The principal submission made on behalf of the Bank is that the suit is pre-emptive in nature. It may be so but then the banks and the financial institutions have their own remedies. As adequate remedy is available to them in law, ordinarily, the same should be directed to be followed. A case of very exceptional nature must be made out for invoking the extraordinary constitutional jurisdiction of a court.

One of the contentions which have been raised is whether the transactions under derivative agreements would come within the purview of the DRT Act. Of course, a tribunal will have a jurisdiction to decide the issue being a jurisdictional issue.

A Furthermore, the company has alleged fraud and misrepresentation.

This Court in *Mardia Chemicals Ltd. and Others v. Union of India* [(2004) 4 SCC 311] has also held that even in such an event, the jurisdiction of the civil court can be invoked.

B

Several other issues of complicated nature may arise before the civil court. We, therefore, are of the opinion that it may not be a fit case where we should exercise our jurisdiction under Article 142 of the constitution of India.

C

DIRECTION

23. However, we make it clear that having regard to the pleadings of the parties as also the purpose and object for which the Tribunal has been constituted, it should proceed to dispose of the bank's claims expeditiously. We, however, have no doubt whatsoever in our mind that while determining the respective claims of the parties and the nature thereof, the tribunal shall comply with all the requirements of law. We, therefore, are of the opinion that the transfer applications have no merit. They are dismissed accordingly with the aforementioned observations.

D

E

Having regard to our finding that even Section 24 of the Code of Civil Procedure cannot be taken recourse to, there cannot be any doubt whatsoever that the Punjab and Haryana High Court could not have transferred the suit from the civil court Ludhiana to DRT. Civil Appeal arising out of SLP (C) No. 24715 of 2008 is, therefore, allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

F

G G.N. Appeal allowed & Transfer petition dismissed.