

(2011) 04 MAD CK 0180

In the Madras High Court

Case No : C.R.P. No. 506 of 2004 and C.M.P. No. 4377 of 2004 and V.C.M.P. No. 6278 of 2004

Dr. E. Prabakaran and Prema Prabakaran

APPELLANT

Vs

The Lakshmi Vilas Bank Limited

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 106, Order 43 Rule 1, Order 5 Rule 10, Order 5 Rule 19A(2), Order 9 Rule 13
Constitution of India, 1950 — Article 226, 227
Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 — Rule 7, 8(2)
General Clauses Act, 1897 — Section 27
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 22, 22(2), 3(2)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 8(3)

Citation : (2011) 04 MAD CK 0180

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : N.R. Chandran, S. Niveditha and R. Saranya, for the Appellant;
Nalini Chidambaram and A.V. Radhakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioners have filed the present Civil Revision Petition as against the order dated 05.03.2004 in M.A. No. 34 of

2004 in I.A. No. 30 2001 in T.A. No. 2234 of 2002 (O.A. No. 691 of 1999) passed by the Debts Recovery Appellate Tribunal, Chennai.

2. The Debts Recovery Appellate Tribunal, Chennai, while passing orders in M.A. No. 34 of 2004 on 05.03.2004, has, among other things,

observed, in paragraph 6, as follows:

... He further pointed out that even on 7.1.2004 the guarantors wrote letter to the Chairman of the applicant Bank giving the address as Baroda

Street only. So, all these correspondence clearly reveal that the Appellant was residing in Baroda Street and only for the Baroda Street address all the correspondence were sent and the Appellant was also sending letters only from that address. It has not been established that the Appellant was not at all residing in 25-A, Baroda Street, West Mambalam, Chennai. Even with regard to the vacating of the premises and the occupation of the premises by another person, there is no intimation at all by the Appellants to the Bank. In the absence of any intimation to the Bank, the Bank is not expected to know about the vacation of the premises by the Appellant. All these correspondence clearly reveal that the Appellant was residing in the Baroda Street address and he is also clearly aware. The fact that the Order copy was sent to the Baroda Street address clearly reveals that the Appellant is residing in that premises and he came to know about the passing of the Order only from that address. All these things clearly go to establish that there was proper service of summons, the Appellants were residing only in that address and notices were sent only to the address given by the Appellants. In the absence of any proof that the Appellant vacated premises and shifted his premises to other area intimating by letter, it is very difficult to sustain the case of the Appellants. and further held in paragraph 7 that "the Correspondences sent subsequently also reveal that the Appellant was residing only in that address. So, it cannot be stated that there is no proper service of summons etc. and resultantly, held that there is no proper ground to set aside the exparte order and dismissed the Appeal."

3. The Learned Senior Counsel for the Revision Petitioners submits that the order of the Debts Recovery Appellate Tribunal dated 05.03.2004 in

M.A. No. 34 of 2004 in I.A. No. 30 of 2001 in T.A. No. 2234 of 2002 (O.A. No. 691 of 1999) is against law and further that the said Tribunal

has failed to exercise its jurisdiction in a proper manner resulting in material irregularity and illegality.

4. According to the Learned Senior Counsel for the Petitioners, having found that the Respondent/Bank has sent the Lawyer's Notice only to the

address of the Petitioners at Zackaria Colony, Chennai-94 before filing of O.A. No. 691 of 1999, the Debts Recovery Appellate Tribunal has

committed an error in observing that the Petitioners have resided at No. 25-A,

Baroda Street, West Mambalam, Chennai on the basis that the summons have been returned with an endorsement "Not claimed".

5. The Learned Senior Counsel for the Petitioners contends that the Debts Recovery Appellate Tribunal failed to see that the inmates of the premises might have unclaimed the said summons since it has not been addressed to them.

6. The Learned Senior Counsel for the Petitioners projects a plea that the Petitioners has specifically mentioned in Ground No. 7 of the

Memorandum of Appeal in M.A. No. 34 of 2004 that they occupied the premises at No. 25-A, Baroda Street, West Mambalam, Chennai-33

only in June 2001 for the first time and when that be the position, the Debts Recovery Appellate Tribunal has incorrectly held that the Counsel

submitted that the Petitioners originally resided at the aforesaid address and then vacated.

7. The Petitioners have taken a ground in the Revision that the Debts Recovery Appellate Tribunal has failed to appreciate that just because the

premises No. 25-A, Baroda Street, West Mambalam, Chennai-33 belongs to them and given as security, it does not mean that they have resided

in the said premises only when the summons have been sent from the Debts Recovery Tribunal.

8. The stand of the Petitioners is also to the effect that when it is their case that they have resided only at Zackaria Colony when the summons have

been sent, the question of informing the change of address does not arise.

9. The Learned Senior Counsel for the Petitioners submits that only because of the fact that the cover has been returned as "Not Claimed" it does

not mean that the Petitioners have returned the same, when there is possibility of returning the cover by the occupants of the premises also.

10. The other limb of the argument advanced by the Learned Senior Counsel for the Petitioners is that the documents filed by the

Respondent/Bank will prove that the Petitioners have not resided at No. 25-A, Baroda Street, West Mambalam, Chennai-33 during the year,

1999 when the summons have been sent from the Debts Recovery Tribunal.

11. The Learned Senior Counsel for the Petitioners contends that when the Petitioners have mentioned that some persons from 25-A, Baroda

Street, West Mambalam, Chennai-33 have handed over the order copy at

Zackaria Colony, it is crystal clear that they have not been in occupation of the said premises and that the Debts Recovery Appellate Tribunal erred in holding that the Petitioners have been occupying the said premises when the summons have been sent from Debts Recovery Tribunal.

12. The Learned Senior Counsel for the Petitioners brings it to the notice of this Court that the Debts Recovery Appellate Tribunal has wrongly relied upon the correspondence notes of the Petitioners since June, 2001 where they have furnished their address as No. 25-A, Baroda Street, West Mambalam, Chennai-33. Also, the real issue which is to be decided is that whether the Petitioners have resided in the said address at the relevant point of time when the summons have been sent from the Debts Recovery Tribunal.

13. Besides this, the Learned Senior Counsel for the Petitioners submits that all the letters referred to by the Respondent, as made mention of in para 6 of the Order of the Debts Recovery Appellate Tribunal, are sent by the Petitioners subsequent to September, 2001 which goes to show that the Petitioners have been residing at No. 25-A, Baroda Street, West Mambalam, Chennai-33 only from June, 2001.

14. It is the contention of the Learned Senior Counsel for the Petitioners that the Revision Petitioners ought to be provided with an opportunity to prove their case and that a narrow and technical approach ought to be avoided by a Court of Law to put an end to an unnecessary prolonging of litigation.

15. Lastly, it is the submission of the Learned Senior Counsel for the Petitioners that the Debts Recovery Tribunal has failed to see that even if the Exparte order is passed, the Debts Recovery Tribunal should have granted interest at 6% per annum from the date of the order till the date of realisation and not the contract rate and as such, the amount claimed by the Respondent/Bank in O.A. No. 691 of 1999 is an illegal one which needs to be set aside to prevent an aberration of justice.

16. In response, the Learned Senior Counsel for the Respondent/Bank submits that the Revision Petitioners are Defendants 2 and 3 in O.A. No. 691 of 1999 and that the 1st Defendant in the aforesaid Original Application is the Principal Debtor and that he has not filed any application to set aside the Exparte Decree passed against him.

17. Added further, the Learned Senior Counsel for the Respondent/Bank contends that the Revision Petitioners/Defendants 2 and 3 have evaded

the service of summons with an endorsement "Doors always locked" and only after the paper publication being effected, the Debts Recovery

Tribunal has passed the exparte order.

18. The Learned Senior Counsel for the Respondent/Bank merely submits that the Revision Petitioners/Defendants 2 and 3 are the owners of the

premises bearing Door No. 25-A, Baroda Street, Chennai and they continue to remain there. Further, it is not correct to state that the Petitioners

have vacated the building long ago. Moreover, the Petitioners have not spelt out in their affidavit in I.A. No. 30 of 2001 as to how they obtained the

order copy transmitted by the Debts Recovery Tribunal to Door No. 25-A, Baroda Street, Chennai and the particulars of the person who has

handed over the same to them.

19. The substance of the submission made by the Learned Senior Counsel for the Respondent/Bank is that it is not correct for the Petitioners to

state that they have come to know about the passing of the decree only on 20.12.2000.

20. In short, the submission of the Learned Senior Counsel for the Respondent/Bank is that I.A. No. 30 of 2001 filed by the Petitioners u/s 19 of

the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 praying to set aside the Exparte Order against them in O.A. No. 691 of

1999 dated 20.11.2000 is not a bona fide one.

21. At this stage, it is useful for this Court to refer to the averments made by the Petitioners in I.A. No. 30 of 2001 wherein at paragraph No. 1

they have mentioned, inter alia, that "in O.A. No. 691 of 1999 at no time any notice or summons were served upon either of the Appellants and

that they were residing in the address given in O.A. No. 691 of 1999 few years back and since they have vacated the premises and only on

20.12.2000 persons from the address given in O.A. No. 691 of 1999 viz., 25-A, Baroda Street, West Mambalam, Chennai-33 handed over the

order copy in O.A. No. 691 of 1999 and then only the applicant came to know that the orders have been passed against them which has been

despatched on 22.11.2000 from the office."

22. The Learned Senior Counsel for the Revision Petitioners/Defendants 2 & 3

cites the decision of the Hon''ble Supreme Court in Rabindra Singh

Vs. Financial Commissioner, Coopraton, Punjab and Others, wherein it is held hereunder:

All courts in a situation of the present nature have the incidental power to set aside an ex parte order on the ground of violation of the principles of

natural justice. Thus, even in the absence of any express provision, having regard to the principles of natural justice in such a proceeding, the courts

will have ample jurisdiction to set aside an ex parte decree, subject of course to the statutory interdict. What matters for exercise of jurisdiction is

the source of power and not the failure to mention the correct provisions of law.

23. He also relies on the decision of the Hon''ble Supreme Court in Sri Naresh Chandra Agarwal Vs. Bank of Baroda and Others, wherein it is

held as follows:

The Appellant is one of the legal heirs of the deceased 8th Defendant and an application to bring him on record was made. Having made such

application, it was the bounden duty of the Respondent-Plaintiff as also that of the court to see that all the legal heirs -the proposed legal

representatives (including the Appellant) were duly served. It is not in dispute that at the relevant time when the notice of application was issued by

the trial Court, the Appellant was serving in Gonda District and was not in Pilibhit to which address the notice of substitution was sent.

When a party is sought to be impleaded in a legal proceeding service of notice on such party cannot be a mere formality but should, in fact, be a

reality. In the instant case, neither the trial Court nor the High Court gave any definite finding as to the service of notice on the Appellant. The mere

fact that when the Appellant made an application for setting aside the ex parte decree, he happened to give his permanent residential address which

incidentally happened to be the address to which notice of substitution was sent by the court, will not ipso facto lead to the conclusion that the

notice of substitution was, in fact, served on the Appellant. No inquiry or attempt was made by the trial Court to find out the truth of the fact

whether the notice of substitution was, in fact, served on the Appellant. Even the Plaintiff in its affidavit filed in opposition to the Appellant's

application did not deny the fact that the Appellant was working in Gonda District at the relevant time.

The present one is a case of non-service of notice on the Appellant and not a case of mere irregularity in the service of summons.

In the peculiar facts and circumstances of this case failure to determine the issue as to the guarantee furnished by the late Defendant 8 having been

discharged and consequently his liability and that of his legal heirs having come to an end did spell out prejudice to the interest of the Appellant on

account of opportunity to defend having not been afforded to him. Since the Appellant's share in the estate of his father is bound to be affected by

the execution of the decree, the Appellant ought to have been served with the notice of the application for substitution which having not been done,

the application filed by him was entitled to be granted.

The interest of justice requires that the application of the Appellant for setting aside the decree be allowed and the suit be disposed of after hearing

the Appellant on merits.

The appeal is allowed, the impugned judgments of the High Court and the trial Court are set aside. The application under Order 9 Rule 13 read

with Section 151 CPC filed by the Appellant stands allowed.

24. On the side of the Petitioners, yet another decision of this Court in Doss and Malliga Vs. Vamanan and Gurunathan, is cited before this Court

wherein at paragraph 19 it is held thus:

19. Since the Suit summons have not been served on them and the same has not been served in the manner as provided under the Code of Civil

Procedures, I am constrained to hold that the Petitioners have shown sufficient cause for not appearing before the Court when the case was listed.

Since I arrived at the conclusion that the Petitioners have shown sufficient cause in their Application to set aside the ex-parte decree and their

Application to condone delay in preferring the said Application, the order passed by the Court below is liable to be set aside.

25. The Learned Senior Counsel for the Petitioners invites the attention of this Court to the decision of the Hon"ble Supreme Court in Mahesh

Yadav and Another Vs. Rajeshwar Singh and Others, wherein it is held as follows:

The proviso appended to Order 9 Rule 13 CPC postulates that when an ex part decree has been passed against some of the Defendants and it is

necessary to set aside the entire decree, the court is not powerless to do so. If an application for setting aside the ex parte decree was maintainable

at the instance of the Appellant-Defendants, there is no reason as to why a separate suit was required to be filed. When an ex parte decree is passed, the Defendant may have more than one remedy. He may file an application under Order 9 Rule 13 CPC for setting aside the ex parte decree. He may prefer an appeal from the ex parte judgment and decree. In a given case, he may also file a review application.

26. The Learned Senior Counsel for the Petitioners seeks in aid of the decision of the Hon'ble Supreme Court in *Bank of India Vs. Mehta*

Brothers and Others, wherein it is laid down as follows:

Having heard the learned Counsel for the parties and after noting the arguments advanced by them, we are of the view that the judgment of the

Division Bench of the High Court which is impugned in this appeal so far as that part of the order of the Division Bench setting aside the order of

the learned single judge restoring the suit in its entirety cannot be sustained in law. Now, let us interpret the provisions under Order 9 Rule 13 of

the Code and particularly examine the scope of the Proviso to Order 9 Rule 13 of the Code. In the light of the issue framed by us, as noted herein

earlier, we need to ascertain whether under Order 9 Rule 13 of the Code, it is permissible for the court, on an application of a Defendant against

whom a decree has been passed ex-parte, to set aside the decree also against the other Defendants appearing in the same suit and dismissed on

contest.

We have carefully examined the provisions under Order 9 Rule 13 of the Code as well as its proviso and other relevant provisions under Order 9

of the Code. A reading of Order 9 Rule 13 of the Code would clearly show that under this provision it was clarified that an ex parte decree was

ordinarily to be set aside only against the Defendant against whom the decree was ex parte and the suit was to be revived only qua the said

Defendant applying for setting aside the ex parte decree.

Let us now examine whether the proviso to Order 9 Rule 13 of the Code gives ample power to the court to set aside the decree passed in favour

of the contesting Defendants at the time of setting aside the ex parte decree against other Defendants. Therefore, let us now deal with the proviso

to Order 9 Rule 13 of the Code. It provides that in cases where the decree is of such a nature that the same cannot be set aside only as against the

Defendant applying for setting it aside, the decree could also be set aside as against any or all of the other Defendants. Therefore, this proviso

confers power on the court to set aside the entire decree if the court is of the view that the decree passed was of such a nature that the same could

not be set aside only as against the Defendant applying for setting aside the decree, the decree could also be set aside as against any or all of the

other Defendants also.

If we read the entire provision under Order 9 Rule 13 of the Code, it would be clear that the said provision provides that the decree must be ex

parte against one Defendant or ex parte against all the Defendants. The proviso also does not provide that the decree can be set aside against the

Defendants, other than the applying Defendant, only if it is ex parte against them also. The only requirement for the applicability of this order is that

the decree should be ex parte against the Defendant applying to have it set aside. Thus, the language of the order does not suggest that for the

order to apply the decree must be entirely ex parte. Secondly, if the proviso was to apply only if the decree was ex parte against the other

Defendants also, that would have rendered the proviso practically in fructuous, as in such a situation, the other Defendants would have an

independent right to have the decree set aside against them. In our view, the idea behind the proviso is that if the decree is being set aside as

against some Defendants, and the decree as against the other Defendants is connected, interlinked or dependent on that part of the decree which is

being set aside, the decree may have to be set aside as against the other Defendants also.

27. Apart from the above decisions, the Learned Senior Counsel for the Petitioners places reliance on the following Decisions:

(a) In *Sumangal Jewellers and Ors. v. The Presiding Officer, Debts Recovery Tribunal and Ors.* II (2002) BC 134 this Court, at paragraph Nos. 7

to 9, has observed as follows:

7. On the basis of Rule 22, the learned Counsel appearing for the 3rd Respondent submitted that the Registrar has been assigned with a power to

dispose of the application to set aside the ex parts order by the Presiding Officer and so he is having jurisdiction to deal with the said application. I

am not able to accept the said submission. From the reading of the scheme of

the Act, the judicial function can be done only by the Presiding Officer and Registrar cannot replace him in judicial work. This view of mine is supported by Section 3(2) of the Act. From the said provision it can be seen that the Tribunal alone can decide the applications filed before it and according to Section 4 the Tribunal shall consist of one person only, namely, the Presiding Officer. Such a power is governed only to the Presiding Officer under the Act. The Presiding Officer cannot delegate the judicial power to the Registrar who is only meant for administrative functions and other functions specifically mentioned under Rules 22 and 23 of the Rules.

8. The learned Counsel appearing for the Bank has relied on the judgment of the Apex Court in *Allahabad Bank, Calcutta v. Radha Krishna Maity and Ors.* II (1999) BC 600 : VII (1999) SLT 366 : AIR 1999 SCW 3407. In the said judgment the Apex Court has not dealt with the scope of jurisdiction of the Registrar so the said judgment cannot be relied on to decide the issue in this case. He has also relied on the judgment rendered by P. Shanmugam, J. in C.R.P. No. 3467 of 1999 on 22.11.1999 in support of his submission. In the said case, the learned Judge has not dealt with the provisions with respect to the powers of the Registrar. The learned Judge has decided the case only on facts of that case. So the said judgment cannot also be treated as the precedent for the issue in this case.

9. In view of the above, I am inclined to hold that the Registrar is not having power to decide the application which has to be decided by the Presiding Officer and so the impugned order has to be set aside as the Registrar is not having jurisdiction to decide the issue. Hence the order passed in LA. No. 21 of 2000 is set aside and the matter is remitted back to the Tribunal for fresh disposal by the Presiding Officer.

(b) In the decision *C.K. Sasankan v. The Dhanalakshmi Bank Limited* 2009 (2) CTC 381 the Hon"ble Supreme Court has held that "The quantum and rate of interest which the Appellant in the present case is entitled to would be in accordance with the provisions of Section 34 of the Code. According to the provisions of Section 34 of the Code interest is to be awarded at a reasonable rate and on the principal amount. It is needless to point out that although the amount of interest from the date of filing of the Suit till the date of the decree and thereafter till realisation is in

the discretion of the Court as is confirmed by the use of the word "may" but such discretion has to be exercised by the Court properly, reasonably

and on sound legal principles and not arbitrarily and while doing so the Court is also to consider the parameter, scope and ambit of Section 34 of

Code.

Considering the facts and circumstances of the present case, we find that the rate of interest as awarded for pendente lite and future interest is

exorbitant and thus we direct that pendente lite and future interest at the rate of 9% shall be paid which is found to be just, proper and reasonable.

28. The Registered Clerk of the Respondent/Bank's Counsel has filed an affidavit of service in M.A. No. 4 of 2002 before the Debts Recovery

Tribunal dated 23.01.2002 wherein it is mentioned that Notice to the Defendants have been ordered, returnable by 23.01.2002 and further that as

per orders of the Court notice is taken out etc.

29. In M.A. No. 4 of 2002 in D.R.C. No. 83 of 2001 in O.S. No. 691 of 1999, filed for raising the order of attachment dated 14.12.2001 in the

aforesaid case, the notice sent through RPAD addressed to the 1st Defendant/ Company has been returned with an endorsement "Left returned."

30. However, the Registered Notices with acknowledgement due sent to the 4th Defendant, 1st Defendant/Company, 2nd Defendant (2nd

Revision Petitioner) and 3rd Defendant (1st Revision Petitioner), the postal endorsement in red ink in respect of 4th Defendant is "Unclaimed" and

in back of the said cover, there is an endorsement that on 1.9.99 Door has been locked. On 6.9.99 there is an endorsement that intimation has

been delivered. Finally only the said registered cover with acknowledgement due for 4th Defendant has been returned as "Unclaimed" with an

endorsement thereto by the Postman concerned.

31. The endorsement in the registered cover in respect of 1st Defendant has been mentioned as "Always Door Locked" in blue ink and on the

back of the said cover, it is mentioned that "Always Door Locked". In respect of 2nd Defendant (2nd Revision Petitioner) in the registered cover,

there is an endorsement in red ink as "Not claimed". The address in the said registered cover in respect of the 2nd Defendant (2nd Revision

Petitioner) is No. 25-A, Baroda St., West Mambalam, Chennai-600033. In respect of 3rd Defendant (1st Revision Petitioner), the address in the

registered cover is 25-A, Baroda St., West Mambalam, Chennai-33 and there is an endorsement in red ink as "Not Claimed" and therefore, it has

been returned to the sender. The returned postal covers in respect of 4th Defendant, 1st Defendant, 2nd Defendant (2nd Revision Petitioner) and

3rd Defendant (1st Revision Petitioner) have been filed before the Tribunal and this Court has perused the same.

32. The Paper Publication has been effected in Madras Edition and Erode Edition of Dinamalar dated 20.09.1999 in respect of the notices to the

Defendants 1 to 4 by the Respondent/Bank, which indicates that O.A. No. 691 of 1999 on the file of the Debts Recovery Tribunal, Chennai is

posted to 21.10.1999 at 10.30 a.m. for appearance of the Defendants and further, it is informed that failing their appearance, the suit will be heard

and decided in their absence.

33. When O.A. No. 691 of 1999 came up for hearing before the Debts Recovery Tribunal, Chennai on 20.11.2000, Defendants 1 to 4 have been

set Exparte. Before the Debts Recovery Tribunal on behalf of the Respondent/Bank, the proof affidavit has been filed and Exs.A.1 to A.57 have

been marked. In the Notes Paper in O.A. No. 691 of 1999 on 20.11.2000, the Presiding Officer of Debts Recovery Tribunal has noted as

follows:

Come up before me for the first time. Defendants neither present nor represented so far and were called absent and set exparte. The OA remains

uncontested. Perused records. For Orders "" P.O. Orders pronounced vide separate sheets; allowing the OA with costs; granting a decree to the

applicant and declaring that a sum of Rs. 32,98,966.16 with interest @ 22.5% p.a. (SI) from the date of OA till the date of realisation, be realised

from the Defendants and also by sale of the OA schedule properties. Ordered issue of Recovery Certificate.

34. In fact, in O.A. No. 691 of 1999, the judgment has been passed by the Debts Recovery Tribunal, Chennai in favour of the Respondent/Bank

granting a decree to realise a sum of Rs. 32,98,966.16 with interest at 22.5% per annum (simple interest) from the date of O.A. till the date of

realisation from the Defendants and also by sale of the OA schedule properties and further, it has been declared that the debt is a charge on the

OA schedule properties, that the Defendants have been jointly and severally

liable for the aforesaid debt etc.

35. The Revision Petitioners have projected I.A. No. 30 of 2001 in T.A. No. 2234 of 2002 (O.A. No. 691 of 1999) before the Debts Recovery

Tribunal, Coimbatore praying to set aside the exparte order dated 20.11.2000 against them and the Tribunal, on 28.01.2004, has, among other

things, observed that "So, in the absence of any corroborating documentary evidence the Petitioners/Defendants has miserably failed to prove any

sufficient cause"" which prevented them from appearing before the Tribunal and consequently, dismissed the I.A. with cost of Rs. 1000/- etc."

36. This Court worth recalls the decision in Smt. Vithabai G. Ghodake and Anr. v. United Western Bank Limited and others [AIR 2003 Karn 266

at page 268 & 269] wherein at paragraph 7, it is held hereunder:

7. In the light of the contentions of the learned Counsel Mr. M.H. Datar, it has to be examined whether there was no service of notice on

Petitioners 1 and 2 (who are Respondents 1 and 2 in Misc. No. 40/2000) and thereby the restoration of Execution No. 229/88 is bad. In the

present case, the decree holder filed a petition under Order 21 Rule 106 r/w Section 151, CPC for restoration of Execution No. 229/88 dismissed

on 5.8.2000 for non-filing of the verified statement. The said petition came to be registered as Misc. No. 40/2000. When the notices were sent by

Registered Post, the same was duly served on Smt. Neelaganga Tukaram Pol, who is Respondent No. 3 in Misc. No. 40/2000, where as the

notices on Tukaram Bhivaji Pol and Smt. Vithabai G. Ghodake returned with an endorsement ""not claimed"". On a perusal of the postal

endorsement insofar as Petitioners in the present case are concerned, it was returned with an endorsement ""not claimed"" whereas the notice sent

by RPAD had been duly served on the Petitioner Smt. Neelaganga Tukaram Pol, who is Respondent No. 3 in Misc. No. 40/2000. That apart, in

the order sheet in Misc. No. 40/2000 dated 8.1.2001 as well as 19.2.2001 it clearly reveals that Respondent No. 3 has been duly served whereas

the notices sent to Respondents 1 and 2 were returned as ""not claimed"". The learned Counsel Mr. Datar brings to the notice of the Court the

decision in the case of Sri Naresh Chandra Agarwal Vs. Bank of Baroda and Others, wherein, in the middle of para 10, it is observed as under:

In the instant case, neither the Trial Court nor the High Court gave any definite

finding as to the service of notice on the Appellant. The mere fact that when the Appellant made an application for setting aside the ex parte decree, he happened to give his permanent residential address which incidentally happened to be the address to which notice of substitution was sent by the Court, will not ipso facto lead to the conclusion that the notice of substitution was, in fact, served on the Appellant. No inquiry or attempt was made by the Trial Court to find out the truth of the fact whether the notice of substitution was, in fact, served on the Appellant. Even the Plaintiff in its affidavit filed in opposition to the Appellant's application did not deny the fact that the Appellant was working in Gonda District at the relevant time.

On the basis of the above observation, the learned Counsel contended that there is no finding by the Court regarding service of notice on

Respondents 1 and 2. Therefore, the very order restoring the petition is liable to be set aside. In the case on hand, there is an endorsement by the

postal authorities as ""not claimed"". It is further relevant to note that Respondent No. 3 Smt. Neelaganga Tukaram Pol, who is residing in the same

address has been duly served by RPAD and the same is evidenced from the acknowledgement which is available in the Court file. The address of

Respondent Nos. 1 and 2 Tukaram Bhivaji Pol and Vithabai G. Ghodake is also the same as that of Respondent No. 3. But the same has been

returned with an endorsement as "not claimed". It is not the case of the Petitioners that they are not residing in the said address. Therefore, it has to

be held that the notices were deemed to have been duly served. Order 5, Rule 10 of CPC indicates "Mode of service", whereas Order 5, Rule

19-A(2) of CPC provides for simultaneous issue of summons for service by post, in addition to personal service which reads thus:

Order 5, Rule 19A(2), Code of Civil Procedure :

(2) When an acknowledgment purporting to be signed by the Defendant or his agent is received by the Court or the postal article containing the

summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the Defendant

or his agent had refused to take delivery of the postal article containing the summons, when tendered to him, the Court issuing the summons shall

declare that the summons had been duly served on the Defendant.

It makes clear that the party when refused to take delivery of the postal articles containing the summons etc., it is deemed to be that the notice is

duly served. Accordingly, posted for inquiry. That apart, when the proceedings are well within the knowledge of the Respondent No. 3 Smt.

Neelaganga Tukaram Pol, having been duly served with Court notice, did not choose to participate in the proceedings, it has to be held that it is a

deemed service. Therefore, the contention of the learned Counsel Mr. Datar that there was no service of notice on Petitioners 1 and 2 is without

any force.

37. In K. Majeed Vs. Pappa @ Madurambal and Natarajan, , it is held as follows:

The next submission of Mr. V. Raghavachari, learned Counsel is that the first Defendant has failed to prove that reply, Ex.B-2 was sent by the first

Defendant and there is no postal seal found on the acknowledgment card. However, we are unable to accept the submission of the learned

Counsel for the Appellant for the reason that the document Ex.B-2 itself shows that a reply notice was sent to the Plaintiff by registered post and

further, the endorsement in Ex.B-2 shows that it was refused to be received by the Plaintiff. The Plaintiff has admitted that the address given in

Ex.B-2 was his own and from the fact that the Plaintiff had refused to receive the same, it must be taken that the reply notice was properly served.

Further, the advocate who had issued the reply notice Ex.B-2 was examined as D.W.2 and he also deposed that the reply notice in Ex.B-2 was

despatched to the Appellant/Plaintiff. In other words, there is evidence to show that the notice in Ex.B-2 was properly addressed; necessary

stamps were paid; and it was sent by registered post. Hence, it can be safely drawn that notice in Ex.B-2 was duly delivered and served when the

endorsement shows that it was refused to be received. The first Defendant in the reply notice Ex.B-2 has taken a definite stand that the Appellant

failed to comply with the terms of the agreement of sale and hence, he was cancelling the agreement. The reply notice was issued on 12.8.1983.

Therefore the submission of the learned Counsel for the Appellant that there is no evidence for the despatch of reply notice dated 12.8.1983

(Ex.B-2) is not acceptable and it is rejected.

38. In the decision of Hon''ble Supreme Court in State of U.P. Vs. Chhuttan and Others, , it is laid down as follows:

3. The only point that arises for consideration in this appeal is whether the notice u/s 8(3) of the Urban Land and (Ceiling & Regulation) Act, 1976

was validly served upon the Respondent who is the holder of the land. The competent authority has recorded a finding that notice dated 15.03.77

was served upon the holder on 27.03.77. The appellate authority held that the notice was not properly served as it was not sent by registered post

but served through a Process Server. The High Court has also taken the same view. The requirement of sending notice by registered post would

arise when notice is tried to be served through post. In this case the notice was served upon the wife of the holder by a Process Server. Whether

that amounted to valid service of notice or not was not considered by the competent authority before recording the finding that it was served. As

this aspect was not considered by the High Court and also by the authorities below, we set aside the impugned orders passed by them, remit the

matter back to the competent authority for deciding the question of valid service of notice afresh after hearing the parties.

39. This Court aptly recalls the decision of the Hon"ble Supreme Court in Basant Singh and Another Vs. Roman Catholic Mission, it is observed

as follows:

Once it is proved that summons were sent by registered post to a correct and given address, the Defendants' own conduct becomes important.

Before the Trial Court, the Appellants were allowed to lead evidence in support of their contentions. An order to this effect was passed by the

Trial Court on 11.1.1991. The premises in question is occupied by two Defendants jointly - Hari Singh and Basant Singh. Hari Singh appeared

and examined himself stating that he did not receive the registered letter. However, the Defendant Basant Singh did not appear and no evidence

whatsoever, on his behalf, has been led to rebut the presumption in regard to service of summons sent to him under registered post with

acknowledgment due. His own conduct shows that the registered summons had been duly served on him. As already noticed, Hari Singh appeared

and save and except the bald statement that registered letter was not tendered to him, no evidence whatsoever was led to rebut the presumption.

He could have examined the postman, who would have been the material witness and whose evidence would have bearing for proper adjudication.

He has failed to discharge the onus cast upon him by the Statute. This apart, it is inherently improbable that the registered summons were duly served on Basant Singh but not to Hari Singh when they occupied the tenanted premises jointly. In ordinary circumstances, if both the local dailies are widely circulated in the area the change of the name of the local daily from ""Dainik Bhaskar"" to ""Aacharan"" would not materially affect the service of notice by way of substituted service, deemed to have been served, and would not invalidate the effect of substituted service just because the notice for substituted service has been published in the local daily which is not ordered by the court. It is inherently probable that publication in the local daily Aacharan which is widely circulated in the area and the substituted service would have constituted a sufficient notice to the Defendants. The publication of the substituted service in the local daily Aacharan instead of Dainik Bhaskar is a mere irregularity in service of summons.

40. In Samir Snigdha Chandra Vs. Pranaya Bhusan Chandra and Others, it is held as follows:

7. The whole scheme of Rule 19-A is to expedite the process of service of summons which usually takes a long time. The only requirement of this rule is, issue of summons simultaneously in the ordinary manner and by registered post. And once that is done, then it cannot be contended that in the absence of proof of proper service of summons in the ordinary manner, the service by post, would be rendered ineffective. In my opinion, taking such a view would make the amendment completely nugatory and defeat the intention of the legislature. On reading the Proviso to Rule 19-A, I find myself very much assured for taking the above view since Rule 19-A is unambiguous and clear in its terms. I would accordingly hold that once a declaration under Sub-rule (2) of Rule 19-A is made by the Court, service by registered post on the Defendant shall be deemed to be sufficient.

41. In Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, it is observed as follows:

16. Now what are the requirements of principles of natural justice, which are required to be observed? These are:(1) workman should know the nature of the complaint or accusation; (2) an opportunity to state his case; and

(3) the management should act in good faith which means that the action of the management should be fair, reasonable and just. All these three criteria have been fully met in the present case. Principles of natural justice are inbuilt in Clause 16 of the Bipartite Settlement. When evidence was led before the Tribunal, Bank produced the registered covers, which had been received back with the endorsement ""refused"" and the addressee ""not found during delivery time"". Dayananda said he never refused to receive the notice. In these circumstances Tribunal thought it necessary to hold that notice was not served on Dayananda as the Bank did not examine the postman. The notice was sent on the correct address of Dayananda and it was received back with the postal endorsement refused"". A clear presumption arose in favour of the Bank and against Dayananda. Yet the Tribunal held that no notice was given to Dayananda as postman was not produced by the Bank. This appears to us to be rather an incongruous finding by the Tribunal". Unfortunately, High Court did not go into this question at all. Considering the conduct of Dayananda all this period and after three years of his having voluntarily retired from the Bank in terms of Clause 16 of the Bipartite Settlement his statement that he did not receive the notice was a sheer lie. His whole edifice was built on falsehood and yet the Tribunal was there to give him relief on the platter though at the same time criticised his conduct during his employment with the Bank.

42. In M/s. Madan and Co. Vs. Wazir Jaivir Chand, the Hon"ble Supreme Court has observed as follows:

The proviso to Section 11(1)(i) of the J & K Houses and Shops Rent Control Act insists that before any amount of rent can be said to be in

arrears, a notice has to be served through post. All that a landlord can do to comply with this provision is to post a prepaid registered letter

(acknowledgement due or otherwise) containing the tenant's correct address. This is the only method of service of the notice prescribed by the

proviso. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the

addressee u/s 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person

authorised by him. Such a person may either accept the letter or decline to

accept it and the acceptance or refusal can be treated as a service on, and receipt by, the addressee. When, however, the postman is unable to deliver it on his first visit due to non-availability of the addressee or a person authorised to receive it, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. His responsibilities cannot be equated to those of a court under Order V of the CPC . The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. Apart from the service of the notice by post, the statute does not require any other additional or alternative mode of service, such as "substituted" service as effect by the landlord in the present case, even after the service by post, by getting the notice affixed on the premises in the presence of two witnesses of the locality. If the landlord attempted such service because he was in the same town, that can only show his bona fides. The mere circumstance that he had the notice affixed immediately on the day following the date of return of the postal notice cannot be said to be an indication of mala fides. The sum and substance of the evidence on record is that the tenant had gone away from the premises without intimating the landlord or neighbours of his correct address and without leaving behind any servant or agent to accept letters addressed to him. In this situation, the landlord did his best to bring the notice to the knowledge of the tenant. He cannot be expected to do any more. His petition for eviction cannot be dismissed on this score.

43. In the decision State of M.P. Vs. Hiralal and Others, the Hon"ble Supreme Court has observed as follows:

1. In view of the office report, it would be clear that the Respondents obviously managed to have the notice returned with postal remarks ""not available in the house"", ""house locked"" and ""shop closed"" respectively. In that view, it must be deemed that the notices have been served on the Respondents.

2. Leave granted.

3. The controversy raised in this case is covered by an order of this Court dated 2-8-1995 made in civil appeal arising out of SLP (C) No. 9048

of 1988. We have heard the counsel for the Appellant and following the judgment passed by this Court, we held that the Respondents are not

entitled to the benefit of the provisions of the Land Acquisition Act, 1984, as amended by Act 68 of 1984. Instead, they are entitled to solatium at

15% and interest at 6% on the enhanced compensation from the date of taking possession till date of deposit.

44. In *Basant Singh and Anr. v. Roman Catholic Mission* 2001 A I H C 1408 at page 1414, at paragraph 46 to 48, it is observed as follows:

46. As has already been noticed hereinabove, in the proceedings initiated on the basis of the application filed by the applicant under Order 9 Rule

13, Code of Civil Procedure, the Trial Court had passed a specific order on 11-1-1991 directing the parties to lead evidence in support of their

respective cases. In the said order, it was noticed that both the parties were prepared to lead evidence in support of their respective cases. In spite

of the aforesaid direction, Basant Singh did not appear and no evidence whatsoever was led on his behalf which could in any manner rebut the

presumption in regard to the service of the summons issued to him under registered post acknowledgment due. Hari Singh had examined himself as

a witness but even in his deposition he confined his statement to himself alone asserting that he did not receive the registered letter and the same

was not tendered to him. He had said nothing about the non-delivery or non-receipt of the registered letter acknowledgment due sent to Basant

Singh. In this connection, it may further be noticed that there was no dispute about the registered letters having been sent at the correct addresses.

47. From the copy of the judgment and order passed by this Court dated 8-2-1977 which is on the record, disposing of Second Appeal No.

309/70, it is apparent that in the suit giving rise to the said appeal which had been filed by the Plaintiff-decree- holder against Basant Singh and

Hari Singh the address of Basant Singh was the same at which the summons were sent by registered post acknowledgment due on 24-4-86. Even

in the news paper wherein the summons had been published the address of Basant Singh was the same at which the notice under registered cover

had been sent. In the plaint, the address of Basant Singh was the same at which the registered letter had been sent. It is, therefore, obvious that the

registered letter with acknowledgment due in question had been sent at the correct address of Basant Singh.

48. In the circumstances, a strong presumption in regard to the service of summons on Basant Singh became available to the Plaintiffs which

presumption could not be taken to have been rebutted in any manner.

45. In I (2006) BC 203 it is observed as follows:

5. Thus from the provisions mentioned above, for adjudicating the matters u/s 22(2)(g), the Tribunal/Appellate Tribunal shall function as a Civil

Court as per the provisions of CPC Code. It is also an admitted analogy of law that any appeal provided under law against any order or judgment

is the extended form of the provisions under which the matter in issue had been decided. Under the CPC Code, orders which are appealable have

been enumerated under Order 43 Rule 1 of the CPC Regarding order passed under Order 9 Rule 13 of the CPC , the appeal is provided under

Order 43 Rule 1 (d) wherein it has been specifically mentioned that the appeal is maintainable only when a petition filed under Order 9 Rule 13 of

the C.P.C, is rejected. There is no provision of appeal where allowance of the Order 9 Rule 13, CPC is recorded. Thus no appeal is maintainable

against the allowance of the petition under Order 9 Rule 13, CPC and in that way, Tribunal discharging the powers u/s 22(2) shall also be confined

having powers vested as Civil Court under the CPC In that way, the present appeal which has been filed against the allowance of the petition u/s

22(2)(g) of the Act cannot be held maintainable. However, it has been argued by the learned Counsel for the Appellant that it has been now settled

by different High Courts and the Apex Court that any order passed by the Tribunal under the Act is appealable u/s 20 of the Act, but any order as

has been submitted cannot be equated with an order where there is specific bar for an appeal. Although that bar has not been provided under the

Act itself, rather the Act nowhere provides appeal against interlocutory orders also, but the legal position remains that when the Tribunal shall

exercise the power as a Civil Court in respect of specific provisions, then the appellate provisions are also to be adhered to and thus in my

considered view, the present appeal is not maintainable.

46. In I (2006) BC 228 it is observed as follows:

(xv) Under the RDDBFI Act there is some bar regarding agitating the matter before any other Court except the D.R.T. and D.R.A.T. subject to

jurisdiction under Articles 226/227 of the Constitution of India. Regarding procedural matter, it has also been provided under the Act that the

Tribunals and Appellate Tribunals are free to make their own regulations for the

purpose of procedural matters for getting fruitful speedy remedy basing on natural justice. Some provisions of CPC have been made to apply as provided u/s 22(2) of the Act. Under Sub-section (1) of Section 22 it has been provided that the Tribunal and Appellate Tribunal shall not be bound by the procedure laid-down by the CPC , 1908, but shall be guided by the principle of natural justice. Under Sub-section (2) of Section 22, specific cases have been mentioned wherein the Tribunal and the Appellate Tribunal shall be guided by the CPC and shall act as a Civil Court. Sub-clause (g) of Sub-section (2) provides adjudication regarding setting aside any order of dismissal of any application for default or any order passed by it ex parte. Thus this Clause 22(2)(g) remains pari materia the same as Order 9, Rule 4 and Order 9, Rule 13 of the CPC and the Appellate Court shall also be governed as per the appellate provisions regarding the procedure as contemplated under Order 43. Rule 1(d) of the CPC For an ex pane decree passed in an original suit or an original application before the D.R.T. gives two option to the aggrieved party, first he can file appeal against the ex parte order or he can choose to file a petition under Order 9, Rule 13 of the Code of Civil Procedure/Section 22(2)(g) of the RDDBFI Act. If an appeal is filed against the ex parte decree, then the same should be construed as a final order passed u/s 19 of the Act and then appeal shall be governed u/s 20 and the fees prescribed under Rule 8(2) of the D.R.A.T. (Procedure) Rules for the purpose of fees but if no appeal is filed, rather a petition is filed by taking the alternative remedy before the D.R.T. u/s 22(2)(g) of the Act (pari materia), the same as Order 9, Rule 13 of the CPC then such application shall attract the fees of an application as provided under Rule 7 of the D.R.T. (Procedure) Rules and the appeal against such order, although may be filed u/s 20 of the RDDBFI Act but should also be construed as per pan materia the same as Order 43, Rule 1 of the CPC For miscellaneous appeal under Order 43(1) of the CPC Court fees paid are the same as that of petition as was paid before the original Court for the revival application. On the same analogy as the appeal is an extended form continuation of the revival petition, the same should also be governed by the same analogy and principle. Under Sub-section (1) of Section 22 of the RDDBFI Act, there is no bar put on the Tribunal or the Appellate Tribunal

in not taking aid of the procedure laid-down by the CPC , but it has been enumerated that the Tribunal and Appellate Tribunal shall not be bound

by the procedure of the CPC In that way, if the Act is silent or does not cover the procedural issue by the Act and Rules, then definitely the

Tribunal and the Appellate Tribunal can take aid of the similar procedure as laid down under the CPC Thus if the analogy to Order 41, Rule 1 of

the CPC are taken into consideration regarding the fees to be paid for an appeal against an order passed u/s 22(2)(g) of the RDDBFI Act, only

application fees under Rule 7 of the D.R.T. (Procedure) Rules would be sufficient and the same should also come within the category of

interlocutory orders, so from all points of view that no fees have been prescribed for an appeal against an interlocutory order in a pending

proceeding or in rejection of a revival petition, the fees prescribed for application under Rule 7 to the D.R.T. (Procedure) Rules shall be applicable

and not otherwise.

47. It is true that acceptance of "Sufficient cause/Good cause" is an essential condition for setting aside the Exparte Decree. As far as the present

case is concerned, as seen from the records, the registered notices with acknowledgement due have been duly sent to the Revision

Petitioners/Defendants 2 & 3 at the address at 25-A, Baroda Street, West Mambalam, Chennai "600 033 and both the covers have been

returned to the sender with an endorsement "Not claimed". Therefore, it is candidly proved that the Respondent/Bank has taken notice through

registered post to the Revision Petitioners/Defendants 2 & 3 in the correct and given address. As such, it is not open to the Revision Petitioners to

come with a bald assertion that the registered notices have not been sent to them. In short, even though the registered cover with

acknowledgement due sent to the Revision Petitioners/Defendants 2 & 3 was returned as "Not claimed", it is a valid notice and it is deemed to be

proper service, in our considered opinion. Furthermore, a publication has been effected in Tamil Daily Dinamalar, Chennai and Erode Edition

putting the Defendants (including the Revision Petitioners) on notice that the O.A. No. 691 of 1999 is slated to come up for hearing on

21.10.1999 at 10.30 am. Even in the said publication effected by the Respondent/Bank, the address of the Revision Petitioners is mentioned as

No. 25-A, Baroda Street, West Mambalam, Chennai" 600 033.

48. As a matter of fact, the Petitioners are only the Guarantors to the loan taken by the 1st Defendant/Principal Debtor. Nowhere in the affidavit in

I.A. No. 30 of 2001 filed by the Revision Petitioners/Defendants 2 & 3 before the Debts Recovery Tribunal, Coimbatore, it is mentioned that as

to who has furnished the copy of the Tribunal's order at Door No. 25-A, Baroda Street, Chennai- 33. The Petitioners/Defendants 2 & 3 have

been set exparte and an Exparte Decree has been passed against them by the Tribunal in O.A. No. 691 of 1999 after duly fulfilling the necessary

formalities as per procedure. Therefore, the plea of the Petitioners in I.A. No. 30 of 2001 that "in O.A. No. 691 of 1999 at no time any notice or

summons were served upon either of the applicants is not a correct one and it is also not true for them to state that they were residing in the

address given in O.A. No. 691 of 1999 few years back and since they have vacated the premises etc." The very fact that they have received the

order copy transmitted by the Tribunal to the address at Door No. 25-A, Baroda Street, Chennai-600 033 unerringly points out that by virtue of

their ownership, they retain dominion over the said premises.

49. One cannot ignore an important fact that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is an Act which provides

for resolving the Bank Disputes. A Tribunal is constituted under the Act, which is clothed with the power of adjudication as seen from the various

provisions of the said Act. Also, the Rules have been framed in this regard for the purpose of examination of witnesses etc. Indeed, the Rules are

binding on the Tribunal as regards the procedural matters before it. No wonder, the Tribunal is a creation of a statute which is to observe the

principles of natural justice by adopting/devising its own procedure in dealing with the disputes before it. Admittedly, the provisions of CPC are not

applicable to the Tribunal constituted under the Recovery of Debts Due to Financial and Institutions Act, 1993. Of course, there is no embargo for

a Tribunal under the Recovery of Debts Due to Financial and Institutions Act, 1993 to seek the aid of principles of CPC in applying them

wherever it matters.

50. In regard to the plea of the Revision Petitioners that the Tribunal ought to have granted 6% interest from the date of the order till date of

realisation in O.A. No. 691 of 1999, it is to be pointed out that in the Letter of Guarantee dated 9.6.1994 executed by v. Mohan Govindadoss

and Anr., the 1st Revision Petitioner (3rd Defendant in O.A. No. 691/1999) has signed as one of the Guarantors. A Letter of Guarantee in favour

of the Respondent/Bank dated 30.11.1996 has been executed by the 2nd Revision Petitioner (2nd Defendant in O.A. No. 691/1999). In the

Letter of Guarantee dated 30.11.1996, the Guarantee amount is mentioned as "It shall not exceed Rs. 20,00,000/- (Rupees Twenty lakhs only)

and the interest on such amount or on such less sum as may be due is specified at the rate of 22.5% per annum from the date of the principal's

default until date of payment." On 30.11.1996, the 1st Defendant/Company has executed a Letter of Guarantee in favour of the Respondent/Bank.

51. Also, a Letter of Undertaking for storage of goods under hypothecation in regard to Open Cash Credit Limit is mentioned as 20,00,000/-

(Rupees Twenty lakhs only) and the same has been executed by the Managing Director of the 1st Defendant/Company. In the Letter of

Hypothecation dated 30.11.1996 in case of Open Cash Credit No. 14 to a limit of 20,00,000/- availed by the 1st Defendant in O.A. No. 691 of

1999 in favour of the Respondent/Bank, Clause 9 speaks of "That the borrowers shall make and furnish daily/weekly to the Bank such

statements/returns of the cost and market value of the Securities and a full description thereof and produce, such evidence in support thereof as the

Bank may from time to time require and shall keep and maintain in favour of the Bank a margin of 35% percent between the market value from

time to time for the securities and balance due to the Bank for the time being, such margin shall be calculated on the open market value of the

Securities as fixed by the Bank from time to time etc."

52. As a matter of fact, Clause 11 of the Letter of Hypothecation dated 30.11.1996 executed by the 1st Defendant/Company to and in favour of

the Respondent/Bank which enjoins as follows:

11. Interest will be charged at the rate of % over Reserve Bank of India rate of interest with a minimum of 22.5% per annum or at such other rates

as may be notified by the Bank to me/us from time to time with quarterly rests shall be calculated and charged on the Daily balance in the Bank's

favour due upon the said Cash Credit Account until the same is fully liquidated

and shall be paid by the borrowers as and when demanded by the Bank.

53. In this connection, this Court pertinently points out that Section 34 of the CPC refers to the rate of current interest and future interest, which are within the discretion of the Court. The ingredients of Section 34 of CPC indicate the guideline for the use of such discretion. Normally, the grant of interest at the contractual rate ought to be the General Rule. However, the use of discretion to reduce the contract rate or refuse interest is an exception. To deprive or deny interest will tantamount to penalising a Creditor for approaching the Competent Forum/Court and further will encourage the Debtor to wantonly and unfairly procrastinate the litigation. If a Competent Forum/a Court of Law is inclined to reduce the rate of interest either present or future, such reduction must be supported by valid reasons.

54. As far as the present case is concerned, the 1st Defendant/Company and the Revision Petitioners/Guarantors have agreed to the charging of interest at 22.5% per annum by the Bank as seen from the Letters of Guarantee/Documents executed by them to and in favour of the Respondent/Bank. Therefore, we are of the considered view that the grant of contractual rate of simple interest at 22.5% per annum while granting a decree to realise a sum of Rs. 32,98,966.16 from the date of filing of O.A. till the date of realisation etc. is a proper and legally justifiable one, in the eye of law.

55. In law, the liability of sureties/guarantors are coextensive with the Principal Debtor. The Revision Petitioners/Defendants 2 & 3 have reportedly paid a sum of Rs. 20,00,000/- subsequently as observed by the Debts Recovery Appellate Tribunal, Chennai in its order dated 05.03.2004 in M.A. No. 34 of 2004 and this amount has been given credit to by the Respondent/Bank.

56. In the light of detailed discussions and on an overall assessment of the present facts and circumstances of the case in a cumulative manner, we are of the considered view that the Petitioners have not shown any Sufficient Cause to set aside the Exparte Order dated 20.11.2000 in O.A. No. 691 of 1999 passed by the Debts Recovery Tribunal, Chennai and as such, the orders of the Debts Recovery Appellate Tribunal, Chennai in

M.A. No. 34 of 2004 dated 05.03.2004 and the Debts Recovery Tribunal, Coimbatore in I.A. No. 30 of 2001 dated 28.01.2004 do not suffer

from any material irregularity or patent illegality and consequently, the Civil Revision Petition fails.

57. In the result, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs. Consequently, connected miscellaneous petitions are also dismissed.