

**(2016) 07 BOM CK 0054**

**In the Bombay High Court**

**Case No : Writ Petition No. 3071 of 2015**

Fine Platinum (India) Limited

APPELLANT

Vs

Indusland Bank Limited

RESPONDENT

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**Date of Decision : 05-07-2016**

**Acts Referred:**

Debt Recovery Tribunal Procedural Rules, 1993 — Rule 12(5)

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 21

**Citation :** (2016) 6 BCR 494 : (2016) 197 CompCas 358 : (2017) 1 DRTC 219

**Hon'ble Judges :** Naresh H. Patil and A.A. Sayed, JJ.

**Bench :** Division Bench

**Advocate :** Mr. Rohan Cama a/w T.N. Tripathi and Ms. Sapna Rachure i/b. M/s. T.N. Tripathi and Co. in W.P. No. 3071 of 2015. Mr. V.R. Dhond, Senior Counsel a/w Agasti Vibhute i/by M/s. Jayakar and Partners. in W.P. (L) No. 3096 of 2015, for the Appellant; Mr. Rohan C

**Final Decision :** Dismissed

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## Judgement

Naresh H. Patil, J.&mdash;Rule, Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioners in Writ Petition No. 3071 of 2015 and the petitioners in Writ Petition (L) No. 3096 of 2015 have prayed for writ of certiorari or order or direction seeking to set aside the impugned order dated 11th September, 2015 passed by the learned Chairperson of the Debt Recovery Appellate Tribunal at Mumbai in M.A. No. 147 of 2015 in Appeal No. 82 of 2015. The petitioner in Writ Petition No. 3071 of 2015 - Fine Platinum (India) Limited submits that petitioner no. 1 is a company incorporated under the Companies Act, 1956. Petitioner no.2 is an Indian Citizen and Director of petitioner no. 1 - company. The respondent nos. 1 and 2 are Banks carrying on business of banking. Respondents nos. 3 and 4 are companies under the Companies Act, 1956 and respondent no. 5 is an Indian inhabitant. The brief facts as stated by the petitioners are that by a sanction letter dated 3rd February, 2006, respondent no. 1 claims to have

sanctioned to petitioner no. 1 various Working Capital facilities aggregating to Rs. 632 lacs to take over certain liabilities of petitioner no. 1 from ING Vyasya Bank Limited. On 16th February, 2006 respondent no. 1 claims to have got various loan and security documents executed from petitioners. On 9th November, 2006 various consortium documents were executed including memorandum of entry substituting respondent no. 1 in place of ING Vyasya Bank Limited. By a sanction letter dated 5th January, 2010 the credit facilities were revised and reduced to 480 lacs with interest at the rate of 12% per annum.

3. The petitioners submit that respondent no. 2 as a Lead Bank of consortium issued demand notice dated 1st July, 2011 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act, 2002). On 20th September, 2011 respondent no. 2 took possession of factory premises of petitioner no. 1 at Plot No. 62, Seepz, Andheri (W), Mumbai - 400 092 with stocks and movable assets lying therein under Section 13(4) of the said Act. The petitioners claim that on 29th December, 2011 the petitioner no. 1 paid Rs. 75 lacs to respondent no. 1 by way of direct remittance from the overseas buyer. By letter dated 22nd February, 2011 and 18th August, 2011 the petitioner no. 1 sought permission for sale of said property. On 24th March, 2012 respondent no.1 Bank approved Memorandum of Understanding for sale of said immovable security for Rs. 675 lacs.

4. The petitioners' contention is that in haste respondent no. 1 filed Original Application No. 88 of 2011, inter alia, for recovery of Rs. 5,49,25,118/- and for enforcement of mortgage over plot no. 62, Seepz Andheri (W)(hereinafter referred to as said property). The petitioner no. 2 and respondent nos. 3 to 5 were joined as Guarantors in the said original application.

5. Respondent no. 1 moved interim application and sought attachment of the said property. On 16th November, 2012 the petitioners filed detailed written-statement. The petitioners disputed and denied the alleged claim of respondent no. 1.

6. On 11th October, 2012 respondent no.1 filed interim application (exhibit 17) dated 11th October, 2012 for issuance of interim Recovery Certificate for Rs. 3,99,05,735/- under Rule 12(5) of the Debts Recovery (Procedure) Rules, 1993 (for short "Rules of 1993") based on annual report of Petitioner No. 1 for the assessment year 2010-11.

7. The petitioners filed a reply to the said interim application on 11th December, 2012.

8. By an order dated 14th August, 2014 the Debts Recovery Tribunal No. III allowed the said application and granted Recovery Certificate with interest at the rate of Rs. 20.75% per annum with monthly rests from 15th September, 2014 till realisation.

9. Being aggrieved, the petitioners in both writ petitions filed Appeal No. 82 of 2015 before DRAT, Mumbai. The petitioners also filed Misc. Application No. 147 of 2015 seeking waiver of deposit as required under Section 21 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 (hereinafter referred to as RDDBI Act).

10. By an order dated 11th September, 2015 the learned Chairperson directed the petitioners to deposit Rs. 2 Crores within eight weeks in two equal instalments of Rs. One Crore each. The Miscellaneous Application No. 147 of 2015 was disposed of. It was further ordered that in case of default in payment of any instalment, the appeal shall stand dismissed automatically.

11. Learned Senior Counsel Shri Dhond appearing for Guarantors in Writ Petition (L) No. 3096 of 2015 referred to various provisions of RDDBI Act, 1993, SARFAESI Act, 2002 and the relevant documents on record. The learned Counsel submitted that the interim application was filed against the borrower and not against the Guarantors, therefore, the Guarantors are not liable to face the recovery proceedings which were directed to be initiated against the borrower. By referring to Rule 12(5) of the Rules of 1993, learned Counsel submitted that in rule 12(5) the Tribunal was entitled to order such defendant to pay the amount which would not include the Guarantor. In the present case the Guarantor had denied their liability to pay. Learned Counsel submitted that the Debt Recovery Tribunal did not apply its mind to the facts and the pleas raised by the contesting parties before it. It was submitted that the Appellate Tribunal failed to appreciate the issue raised before it by the appellants. The Tribunal did not accord any reasons for ordering payment of Rs. 2 Crores for entertaining the appeal. There is no application of mind by the Appellate Tribunal according to learned Counsel. Learned Counsel placed reliance on the judgment of the Division Bench consisting of Justice D.Y. Chandrachud (as His Lordship then was) and Justice A.A. Sayed in the case of Sterlite Technologies Ltd. v. Union of India and ors. 2012(2) Mh. L.J.) 112. In the facts the Division Bench observed that,

"..... In considering as to whether a waiver should be granted, both the elements of a prima facie case and the question of financial hardship would have to be considered by the Appellate Tribunal. Where as in the present case, the Appellant does not plead financial hardship that is a relevant consideration which has to be taken into consideration and placed in the balance by the Appellate Tribunal. The Appellate Tribunal in its appellate jurisdiction is required to evaluate as to whether a prima facie case has been made out for the grant of waiver...."

Learned Counsel also placed reliance on the judgment in the case of Maya Devi (dead) through Lrs v. Raj Kumari Batra (dead) through LRs and ors., (2010) 9 Supreme Court Cases 486. Paragraphs 22 and 28 read as under:

"22. The juristic basis underlying the requirement that courts and indeed all such authorities, as exercise the power to determine the rights and obligations of individuals must give reasons in support of their orders has been examined in a

long line of decisions rendered by this Court. In *Hindustan Times Ltd. v. Union of India* the need to give reasons has been held to arise out of the need to minimise chances of arbitrariness and induce clarity."

"28. It is in the light of the above pronouncements unnecessary to say anything beyond what has been so eloquently said in support of the need to give reasons for orders made by courts and statutory or other authorities exercising quasi-judicial functions. All that we may mention is that in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity."

12. Learned Counsel Shri Cama appearing for the petitioners in Writ Petition No. 3071 of 2015 submitted that for Section 21 to apply there must be determination under Section 19 of the RDDBI Act. The determination in this case was made under Rule 12(5) of the Rules of 1993. Merely because a Recovery Certificate may later be issued in accordance with Section 19, it does not make the "determination" one which is contemplated under Section 19. Learned Counsel without prejudice submitted that Rule 12(5) of the Rules of 1993 is in two parts. The impugned order relates to first part directing payment. Such order is not an order under Section 19 of the RDDBI Act as there is no final determination and nor is there any Recovery Certificate issued in accordance with Section 19 of the RDDBI Act.

13. Learned Counsel submitted that an order passed under Rule 12(5) of the Act of 1993 is of interim nature and is not an order under Section 19. The application was titled "interim application" with no reference to Section 19 of the Act. In the submissions of Counsel, Section 19 of the Act contemplates the final determination by the Tribunal of the original application itself. In the facts no Recovery Certificate was issued. There is a mere direction in the DRT order that it will be issued on failure to pay. Learned Counsel placed reliance on the judgment in the case of *M/s. Kavita Pigments and Chemicals (Pvt.) Ltd. and ors. v. Allahabad Bank and ors.*, AIR 2000 Patna 43. Paragraph 40 reads as under:

"40. This requirement of pre-deposit of amount determined is a common feature in many fiscal statutes and the said requirement of pre-deposit is only to be enforced in a case where the determination has been made by the Tribunal under Section 19 of the said Act. Therefore, the expression "such appeal" has been used. The requirement of such pre-deposit of the amount determined cannot be enforced by the Appellate Tribunal in connection with an appeal where no such determination has been made as is in the instant case. So this has no substance."

14. Both the learned Counsel Shri Dhond and Shri Cama unanimously submitted that under the RDDBI Act only an order of final determination can ever invite the

requirement of pre-deposit. The provisions of Rule 12(5) are materially different from Order 12, Rule-6 of the CPC. Learned Counsel submitted that analogy sought to be drawn to the provisions of SARFAESI Act is patently misconceived.

15. On the merits of the order passed by the Appellate Tribunal, the learned Counsel submitted that DRAT has not given any reasons whatsoever for its order. On that ground alone the order deserves to be quashed and set aside according to learned Counsel.

16. The learned Counsel Shri Balsara appearing for the respondent no.1 Bank submitted that Section 21 of the RDDBI Act requires deposit of 75% of the amount of debt so due as determined by the Tribunal under Section 19 of the RDDBI Act. In the present case, not only the amount has been determined by the Tribunal on failure to make payment of same but the Tribunal has passed a self operative order for issuance of Recovery Certificate. Section 22 of RDDBI Act expressly provide that provisions of Civil Procedure Code do not apply to recovery proceedings under RDDBI Act. In the facts the debtor is required to deposit 75% of the debt adjudicated to be due and payable. Learned Counsel submitted that amount for which Recovery Certificate has been directed to be issued by DRT by the order dated 14th August, 2014, as on the date of impugned order passed by the DRAT dated 11th September, 2015, is Rs. 4,89,13,785.27. The DRAT has directed to deposit only Rs. 2 Crores. According to learned Counsel the same is just 40.89% of adjudicated amount. Hence, the petitioner cannot be aggrieved by reasons not being given by DRAT in the impugned order. Without prejudice the learned Counsel submitted that DRAT has given reasons for passing impugned order. Learned Counsel Shri Balsara submitted that the only two points pressed before DRAT were that there was no admission by the Guarantors and that there was offer of Rs. 6.5 Crores. Learned Counsel submitted that a common written-statement was filed by the Principal Debtor and Guarantors and common reply to the interim application was filed by the Principal Debtor and the Guarantors. A common Miscellaneous Application for waiver of pre-deposit under Section 21 of the RDDBI Act was filed by Principal Debtor and Guarantors. The Principal Debtors and Guarantors had filed Writ Petition (L) No. 2932 of 2015 jointly. After withdrawal of the said petition, separate writ petitions have been filed now. Learned Counsel submitted that order passed under Rule 12(5) of the Rules of 1993 has to be read along with provisions of Section 19 of the RDDBI Act as the Recovery Certificate is ordered to be issued in accordance with Section 19 of the RDDBI Act. In the facts in deciding the interim application the Tribunal thus determined the issue. Hence, it cannot be argued that in deciding interim application, there is no determination by the Tribunal.

17. Learned Counsel Mr. Balsara placed reliance on the Madhya Pradesh High Court judgment in the case of Naresh Agrawal v. Bank of India and ors. Passed in Writ Petition No. 14526 of 2012. The Court observed as under:

"Now, the only question is as to whether this appeal challenging rejection of the

application under Order 9, Rule 13 CPC is only a miscellaneous appeal and, therefore, the provision of deposit under section 21 of the Act of 1993 is not applicable.

Under the Act of 1993, the provision of appeal is under section 20, Section 20 sub-section (1) contemplates that save as provided in sub-section(2) any person aggrieved by any order made, or deemed to have been made by a Tribunal under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter. However, subsection(2) contemplates that no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of the parties. Thereafter, section 21 contemplates that where an appeal is preferred by any person from whom any amount of debt is due to a bank of a financial institution or a consortium of banks or financial institution, such appeal shall not be entertained by the Appellate Tribunal until and unless deposit to the extent indicated in section 21 is made.

It is, therefore, clear that against any order passed by the DRT an appeal is maintainable under section 20. An order passed in an application under Order 9, Rule 13 will also come in the category of any order as contemplated in section 20(1).

No other provision is brought to our notice wherein any miscellaneous appeal or appeal can be filed. Once an appeal is filed under section 20 and when there is a debt due against the petitioner and which is being recovered by way of revenue recovery certificate, the provision of section 21 is attracted and we see no error in the order passed by the Appellate Tribunal in applying the provisions of section 21."

Learned Counsel also placed reliance on the Supreme Court judgment in the case of Allahabad Bank v. Canara Bank & anr., (2000) 4 SCC 406. In paragraph 52 it is observed as under:

"52. Before we go to Section 19(19), we would like to dispose of another minor point raised by the respondent on the basis of Section 19(2). That sub-section permits other banks or financial institutions to be impleaded in the main application filed under Section 19(1) by a bank or a financial institution. Question is whether Canara Bank can be impleaded in the main application under Section 19 at this stage. We may point out that Section 19(2) permits such impleadment "at any stage of the proceedings before a final order is passed". The final order here is the order of adjudication under Section 19(1) as to whether the debt is due or not. In the present case, the adjudication order in respect of the debt has already been long back and therefore Section 19(2) does not permit any impleadment in the main application under Section 19(1) at this stage. Hence, this relief for impleadment cannot be granted."

(emphasis supplied)

Reliance is also placed on the judgment in the case of Ultramatix Systems Pvt.

Ltd. v. State Bank of India and ors., 2007 (6) ALL MR 327. In paragraph 8 it is observed as under:

8. Having come to the conclusion that the amounts set out in the profit and loss account are an admission of amounts due by the petitioner to respondent no.1, the question that has to be answered is whether the admission has to be in the course of the proceedings. We may refer to the judgment of the Supreme Court in Uttam Singh Dugal and Co. Ltd. v. Union Bank of India and Ors. The issue there arose considering the provisions of Order 12, Rule 6 of the Civil Procedure Code. The contention urged was that resolutions or minutes of the meeting of the Board of Directors and resolution thereof cannot amount to a pleading to come within the ambit of the rule. The Supreme Court noted that before the trial Court, there was no pleading much less an explanation as to the circumstances in which the said admission was made so as to take it out of the category of admission. The Court noted that the matter could be decided even without referring to the expression "otherwise" in Rule 6 Order 12 of Civil Procedure Code and that in inference or liability could be drawn on the basis of the pleadings. In the instant case also, in the application, the respondent no.1 had pleaded based on the profit and loss account of the petitioners that the amount set out therein was an admission that the amount was due and payable. There was no specific denial except for such vague pleadings. It is, therefore, clear that there was an admission by the petitioner in response to the application taken out by the respondent no. 1. No material was produced or explanation given of the circumstance under which the admission was made to take it out of the category of admissions which created the liability. On this count itself, the petition, in our opinion is liable to be dismissed as the admission would be admission binding on the petitioner and it was open to the Tribunal to pass an order in terms of section 19(20) of the Act read with Rule 12(5) of the Rules.

Assuming it not to so, then whether the admission is required to be made only in the pleadings. The language of the Rule does not lend itself to that construction, as the expression does not require that the admission must be made by the defendant in the pleadings before the Tribunal. The expression "defendant" has to be considered in the context of the opponent in the proceeding. The language used is to order such defendant to pay the amount to the extent of such admission. The language, therefore, used is susceptible of a wider meaning to include any admissions by the defendant. In other words, in proceedings either before the Tribunal or also in any other document. The object of the Act being to enable financial institutions to recover their debts expeditiously. Any other construction would defeat the very object of the Act. The language used in Order 12, Rule 6 of Civil Procedure Code is in the pleadings or otherwise, unlike the language of Rule 12(5) of the Rules. As we have noted, the statement contained in the profit and loss account duly certified by the auditor is based on the records of the company. Once the balance sheet/profit and loss account shows the amount and that as a statutory requirement of the Companies Act, we fail to understand as to how that cannot be an admission which can be proved against

the company. It is for the company to establish by relevant facts that the admission would not be an admission in the eyes of law. In the instant case, the petitioner has been unable by any relevant fact to displace the admission made in the balance sheet. In our opinion, therefore, the admission in the balance sheet has been proved against the petitioner and as we have held earlier that such an admission even other than in the pleadings before the Tribunal can be proved against the party in making the admission. We have, therefore, no hesitation in holding that the expression "admission" in Rule 12 (5) of the Rules can be read to mean an admission both in the pleadings, in the proceedings as well as an admission of fact not in the proceedings and which is evidenced by any document or mode provided under section 17 of the Indian Evidence Act. That contention must, therefore, be rejected."

Reliance is also placed on judgment of this Court in the case of Godavari Laxmi Co-op. Bank Ltd. v. Union of India and anr., 2012(2) Mh.LJ. Paragraph-12 of the order reads as under:

12. We find that the Appellate Tribunal committed error in waiving the mandatory condition of pre-deposit by the respondent no.2 before entertaining the appeal as stipulated under the provisions of section 18 of the Act of 2002. In the light of the reasoning's adopted by us as above, we find that the order passed by the Appellate Tribunal is required to be quashed and set aside."

18. The issue raised before this Court is as to whether provision under Section 21 of RDDBI Act relating to pre-deposit for entertaining an appeal is applicable to the order passed by the Debts Recovery Tribunal on an interim application filed under Rule 12(5) of the Rules of 1993. The second issue raised is as to whether the impugned order lacks reasoning. Learned counsel Shri Cama and Shri Balsara have also filed written synopsis/submissions.

19. Some of the provisions of the RDDBI Act are required to be referred. Section 19 falls under Chapter IV referring to procedure of Tribunal. An application is preferred to Tribunal under Section 19 of the Act where a Bank or financial institution has to recover any debt from any person. Procedure is prescribed for filing of such application and for its process by the Tribunal. Relevant provisions of Section 19 (1) of RDDBI Act read as under: -

"19. Application to the Tribunal.- (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or



(c) the cause of action, wholly or in part, arise.

Sub-sections (20A), (21) and (22) of Section 19 of RDDBI Act, read as under:-

(20A) Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate."

Section 20 refers to Appeal to the Appellate Tribunal. It reads as under:

"Section 20 - Appeal to the Appellate Tribunal. (1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it with in that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Section 21 refers to deposit of amount of debt due, on filing appeal. It reads as under:

"Section 21 - Deposit of amount of debt due, on filing appeal - Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent, of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

We may refer to certain provisions of Debts Recovery (Procedure) Rules, 1993. Rule 12(5) reads as under:-

"12. Filing of reply and other documents by the defendant.-

(1) ?.....

(2) ?.....

(3) ?.....

(4) ?.....

(5) Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission, by the applicant within a period of one month from the date of such order failing which the Tribunal may issue a certificate in accordance with section 19 of the Act to the extent of amount of debt due admitted by the defendant."

20. Admittedly, the interim application (Exhibit 17) was filed and decided in accordance with the provisions of Rule 12(5) of the Act of 1993 as according to the applicants therein there was an admission in the audited balance-sheet of respondent no.3 - Fine Platinum to the tune of Rs. 3,99,05,735/-. The DRT considered the pleas raised by the contesting parties and reached conclusion to pass order under Section 12(5) by directing the defendants, including borrowers and Guarantors to pay the admitted debt. The Presiding Officer of DRT-III, Mumbai passed the following order:

"1. The application (Exh. 17) is allowed.

2. The Defendants shall pay a sum of Rs.3,99,05,735/- to the Applicant within one month failing which recovery certificate for the said amount with interest @ 20.75% per annum with monthly rests from 15.09.2014 till realisation shall be issued.

3. The O.A. shall proceed further on merits."

21. A simple, literal construction is required to be applied to the provisions of Section 21 of the RDDBI Act. The reference to amount of debt due as determined by the Tribunal under Section 19 occurring in Section 21 is of significance. It is

relevant and important because in the facts of the present case, the petitioners have raised issue that there was no determination done as per Section 19 of the RDDBI Act.

22. On the principles of interpretation of statutes, we may refer to some of paragraphs of the reported judgment in the case of M/s. Kavita Pigments and Chemicals (Pvt.) Ltd. and ors. v. Allahabad Bank and ors., AIR 2000 Patna 43. Paragraphs 31 to 34 of the said judgment read as under:

"31. Again in *Pakala Narayan Swami v. Emperor* reported in AIR 1939 PC 47 Lord Atkin, speaking for the Bench at page 51 of the report has put the same principle as simply as this : "But in truth when the meaning of words is plain it is not the duty of the Courts to busy themselves with supposed intentions."

32. Justice Gajendragadkar in *Kanailal Sur v. Paramnidhi Sadhu Khan* reported in AIR 1957 SC 907 has also spoken in the same vein. The words of the learned Judge may be quoted below:-

"If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

33. Justice S.R. Das was even more emphatic in saying "The spirit of the law may will be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the section of the Act." See *Rananjay Singh v. Baijnath Singh* reported in AIR 1954 SC 749 at page 752.

34. Francis Bennion in his famous treatise "Statutory Interpretation", Second Edition, Butterworths at page 599 has reiterated this principle by saying that there is a presumption in favour of literal interpretation and saying so the learned author has quoted two learned Judges. The said passage is set out below:-

"The presumption in favour of literal interpretation was stated by a nineteenth century Lord Chancellor, Lord Selborne, in the words "there is always some presumption in favour of the more simple and literal interpretation of the words of the statute." Judges of the present day show no inclination to abandon the presumption, despite the growing popularity of "purposive" construction. As Lord Parkar CJ said : "the intention of Parliament must be deduced from the language used."

23. Learned counsel Shri Balsara appearing for the bank submitted that since the petitioners filed waiver application before the DRAT, they were aware that a pre-deposit was mandatory, in the facts of the case and in view of provisions of Section 21 of the RDDBI Act. The petitioners did not argue before the DRAT that in the fact situation, there was no requirement of pre-deposit. Therefore, they are now precluded from raising a new ground before this court. We find that the petitioners are raising a legal ground in respect of interpretation of provisions of

Section 21 of the RDDBI Act. We are of the considered view that the petitioners must be permitted to raise this ground in the present proceedings.

24. Mr. Cama, learned counsel appearing for the petitioners submitted that Rule 12(5) of the Rules of 1993 is in two parts. In the first part, the Tribunal would pass order where defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution. In the second part, on failure of the defendant to pay the amount, a recovery certificate in accordance with Section 19 of the RDDBI Act to the extent of the amount of debt due admitted by the defendant would be issued. It is submitted that the petitioners had approached DRAT against first part of the order under Rule 12(5). Therefore, the provisions of pre-deposit under Section 21 while filing appeal is not attracted.

25. We are not convinced with the interpretation put up by the learned counsel for the petitioners. In our view, Rule 12(5) cannot be separated in two parts. The said Rule clearly stipulates that on failure of the defendant to pay the amount to the extent of the admission within a period of one month from the date of order, a certificate in accordance with Section 19 of the RDDBI Act would be issued. The words "may issue a certificate" occurring in Rule 12 (5), according to the learned counsel, would mean that only in certain contingencies, the issuance of certificate could get delayed/postponed and a party to the proceeding may independently challenge issuance of certificate itself. Considering the scheme of the RDDBI Act, more precisely the provisions of Section 19 and Rule 12 (5) of the Rules of 1993, we are of the view that recovery certificate is akin to decree in a suit. A recovery certificate would amount to formal expression of the adjudication. The Act and the Rules do not contemplate separate proceedings to be initiated, much less, adjudicated for getting the recovery certificate issued. Therefore, we are not inclined to accept the contention canvassed on behalf of the petitioners.

26. It was submitted by the learned counsel appearing for the petitioners that before issuance of recovery certificate, the debt has to be determined by the Tribunal in accordance with the provisions of Section 19 of the RDDBI Act and the determination is required to be conclusive one under Section 19. Perusal of provisions of Section 19 (20) shows that the Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice. This shows that under provisions of Section 19, interim order in the shape of interim determination is contemplated. In our view, the order passed under Rule 12(5) would amount to interim determination. The adjudication done by DRT under Rule 12(5) in directing to pay the admitted amount of debt would be in the nature of final determination to the extent of the admitted amount. Such amount determined under Rule 12(5) would not be subject matter of further adjudication while the DRT proceeds to finally determine the rest of the amount of debt due to

a bank or financial institution.

27. Consequent to such interim determination a recovery certificate could be issued under Sub-clause (22) of Section 19 by the Presiding Officer. The provisions of Sub-clause (22) of Section 19 speaks that the Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate. Therefore, the order passed, on admission of defendant, by the Tribunal would be under Section 19 read with Rule 12(5) of the Rules of 1993. Upon Tribunal passing order under Rule 12(5) and on non payment by defendant what follows is the issuance of recovery certificate by the Presiding Officer. It is a consequential act of giving formal expression to the order passed by the Tribunal.

28. If a party challenges order passed by the Tribunal under Rule 12 (5) before recovery certificate could be issued, it would not be permissible to raise a plea that order in the first part of Rule 12(5) has been challenged. A defendant challenging such an order passed under Rule 12 (5) is appealing against an order where the Tribunal, on admission of the defendant, has determined a debt to the extent of admission. In the present case, the interim application filed by the borrowers for a decree on admission was contested on merits, replies were filed and the Tribunal had passed a reasoned order determining the amount of debt due, as admitted by the defendant.

29. Under Section 20 of the RDDBI Act, any person aggrieved by an order, may file an appeal to the Tribunal. The right of appeal is not denied in case of interim orders. Under Section 21, there is a mandate of law to pay 75% of the amount due and determined by the Tribunal while preferring an appeal. The payment of pre-deposit is inherent and imperative under the provisions of Section 21, except in cases where Appellate Tribunal, for reasons to be recorded in writing, waives or reduces the amount.

30. Section 21 speaks that such of the appeals shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 75%. This element of mandate of law is of significance. It was argued that amount of debt so due from the party as determined finally by the Tribunal under Section 19 could attract pre-deposit and not under any other circumstance, including the order passed under Rule 12 (5). Considering the scheme of the Act and the relevant provisions, we are of the considered opinion that such an interpretation as tried to be put up by the learned counsel for the petitioners would go contrary to the letter and spirit of the provisions of Sections 19, 20, 21 of the RDDBI Act and Rules 12(5) of the Rules of 1993.

31. The key words of Section 21 of the RDDBI Act are "debt is due". "Debt" is defined under Section 2 (g) of the RDDBI Act. Section 2(g) reads as under:-

"2. Definitions. - In this Act, unless the context otherwise requires,-

(a)

(b)

(c)

(d)

(e)

(f)

(g) "debt" means any liability (inclusive 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 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 on, and legally recoverable on, the date of the application."

The debt has to be adjudged to be due. The process of adjudicating is required to be gone into, may be to limited extent or on an interim application, to find out the quantum of money to be due. Ordinarily, the final adjudication would take place upon conclusion of proceeding filed under Section 19 of the RDDBI Act. But, there could be interim adjudication of part of the claim, while the remaining adjudication of the balance of the claim is determined in a final judgment or order. Under the scheme of the relevant provisions, as quoted above, it is clear that Section 21 of the Act applies to an order which could be an interim order adjudicating part of the claim, while leaving the balance of the claim to be adjudicated. In other words, the determination under Section 19, as contemplated under Section 21, could be interim or final. Any contrary view, in our consideration, would go contrary to the very scheme of the Act. It would not be permissible to read provisions of Rule 12(5) in a way to defeat the object of Sections 19 and 21 of the RDDBI Act. The Rules would not override the statutory provisions. It is elementary that the rules prescribed by a subordinate legislation cannot be in excess or in derogation of the statute under which it is made. Rule 12 (5) is framed in exercise of powers under Sub-sections (1) and (2) of Section 36 of the RDDBI Act by the Central Government, which confers powers on Central Government to make rules to carry out the provisions of the said Act.

32. Even under Rules of 1993, the definition of "application" is prescribed under Rule 2(c), which reads as under :-

"2. Definitions. - In these rules, unless the context otherwise requires, -

(a)

(b)

(c) "application" means an application filed under section 19 or under section 31A and includes an "appeal" filed under section 30(1) of the Act;

The definition itself signifies that the application filed under these Rules would mean an application under Section 19 of the RDDBI Act.

33. Mr. Dhond, learned Senior counsel appearing for the petitioners in WP (L) No. 3096/15 submitted that Rule 12 (5) contemplates passing of an order only against "such of the defendants" who had made an admission. The present suit being a mortgage suit, there was no question of a pre-deposit, according to the learned counsel. It was submitted by the learned counsel that petitioners being guarantors, were not liable and responsible to pay the amount of debt under the order passed by the Tribunal. We are not inclined to accept this submission. Learned counsel appearing for the respondents placed reliance on Clause (3) of Guarantee Deed wherein it was agreed by the guarantors that any admission or acknowledgement in writing given by borrower in respect of their indebtedness, shall be binding on the guarantors and shall be treated as such on behalf of the guarantors also.

34. In view of the clauses in Guarantee Deed, we are of the view that the guarantors are equally responsible to honour and pay the amount due as determined by the Tribunal.

35. So far as the issue of financial hardship raised by the respective petitioners, we find that only two points were urged before the DRAT, that there was no admission by the guarantors and there was an offer of Rs. 6.5 Crores. It is now well settled that several points may be taken in the pleadings but if they are not urged before the court, the court is not required to adjudicate on the same. Even assuming that any other point raised by the petitioners was not considered by the DRAT, they were required to approach DRAT pointing out this grievance, which the petitioners have failed to do.

36. According to the respondent-Bank, the amount found due under order dated 14/8/2014 as on the date of the impugned order dated 11/9/2015 of the DRAT comes to Rs. 4.89 Crores. DRAT had, however, directed only Rs. 2 Crores as pre-deposit, which is 40.89% of the said amount. In the facts, the petitioners were directed to deposit an amount which was much less than the mandatory pre-deposit of 75%.

37. The petitioners, alternatively, submitted that for want of appropriate reasoning by the DRAT, the impugned order be quashed and set aside and matter be remanded. Ordinarily, 75% pre-deposit is imperative. In the facts and circumstances of the case the DRAT has directed about 40% pre-deposit and we do not find this to be a fit case to interfere with the discretion exercised by the DRAT and to remand the matter back on this count.

38. For the reasons stated above, we hold that the order passed by the DRT under Rule 12(5) of the Rules of 1993 amounts to an interim determination of the amount due. In the facts, the petitioners-borrowers/guarantors would be liable to pay an amount towards pre-deposit under the provisions of Section 21 of the RDDBI Act.

39. We hold that if a person files an appeal to DRAT against an order passed by DRT under Rule 12(5) of the Rules of 1993, the provisions of Section 21 of the RDDBI Act gets attracted, irrespective of as to whether a recovery certificate was issued or not.

40. In the interest of justice, we, however, direct that in case the petitioners deposit the amount of pre-deposit, as directed by DRAT, within four weeks from today, then the appeal filed by the petitioners shall stand restored to the file of DRAT.

41. The petitions are accordingly dismissed with no order as to cost. Rule is discharged.