
(2005) 05 DEL CK 0174

In the Delhi High Court

Case No : Writ Petition (Civil) No. 7280 of 2002

Kohinoor Creations and Others

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Arbitration Act, 1940 — Section 34, 5, 8
Arbitration and Conciliation Act, 1996 — Section 8
Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19(2), 19(7), 31
State Financial Corporations Act, 1951 — Section 46B

Citation : (2005) 2 ARBLR 324 : (2005) 4 BC 156 : (2006) 132 CompCas 417 : (2005) 121 DLT 241 : (2005) 82 DRJ 631

Hon'ble Judges : B.A. Khan, J;Anil Kumar, J

Bench : Division Bench

Advocate : D.K. Malhotra, for the Appellant; M.B.R.S. Raju, for the Respondent

Final Decision : Dismissed

Judgement

B.A. Khan, J.—Which of the two acts would prevail. Would the provisions of Arbitration and Conciliation Act, 1996 override those of Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDB Act) is the interesting question raised in this petition.

2. Petitioner No. 1 is the principal borrower and petitioner Nos. 2 to 5 are its guarantors. Petitioner No. 1 executed an export credit agreement with respondent Bank to which other petitioners were not parties. The agreement contained the following arbitration clause:-

"28. In the event of any dispute or defense whatsoever in any manner relating to this agreement including any dispute or dues as regards the consideration or validity of this document or any part thereof or as to any Act done or committed to be done hereunder or otherwise whosoever the same shall be decided by the

sole and summary arbitration by the Chairman of the Bank for the time being or in the event of their being no chairman by the Chief Executive Officer for the time being of the Bank or if he is unable or unwilling to act, then, or any person nominated, or any officer of Bank and it shall be no objection to any such arbitration of the said Chairman or any such person nominated by him that he is/ has in any manner connected with the bank or that he has dealt with or taken any decision in the matter of any disputes earlier with regard to which he shall be called upon thereafter to arbitration and his award shall be final and binding on both the parties."

3. Petitioner No. 1 allegedly committed breach of agreement by defaulting in payment of dues and respondent filed a recovery application for recovery of these before the DRT against all the petitioners. While contesting this application petitioners filed an application u/s 8 of the Arbitration and Conciliation Act, 1996 invoking the arbitration clause and sought stay of the proceedings before the DRT sine die and also prayed that their written statement be kept in abeyance. They disputed their liability and alleged that statement of accounts filed by respondent bank was incorrect. They significantly omitted to seek any reference of dispute to arbitrator but their application was labelled u/s 8 of the Arbitration Act nonetheless.

4. The DRT summarily rejected petitioners application by order dated 6.8.2001 on the ground that provisions of Arbitration Act were not applicable to the proceedings before the DRT and declined to stay the proceedings.

5. Petitioners filed an appeal before the Appellate Tribunal against this order and the Tribunal dismissed it by order dated 18.6.2002 on three main planks:-

1) That the RDB had taken away the jurisdiction of all Courts except the Supreme Court and the High Court under Articles 226 and 227 of the Constitution and had conferred exclusive jurisdiction on the DRT to adjudicate recovery claims on banks and other financial institutions.

2) That the provisions of Section 34 of the RDB Act would override the provisions of Arbitration Act and supersede any instrument which would include the arbitration agreement between the parties in this case.

3) The arbitration agreement being between the petitioner No. 1 and respondent Bank, the recovery claim against other petitioners would have to be continued and proceeded with before the Tribunal only.

6. The reasoning of the appellate Authority makes an interesting reading. It would, Therefore, be advantageous to reproduce the relevant portions from the authority's order for proper appreciation of the issues involved. The authority holds:-

"A question arises whether the provisions of the Arbitration and Conciliation Act of 1996 will override the provisions of the "Act" as they override the provisions of the Code of Civil Procedure. I am very clear in my mind that the provisions of the

Arbitration And Conciliation Act, 1996 shall not override the provisions of the "Act". Rather, I am of the view that the provisions of the "Act" will override the provisions of the Arbitration and Conciliation Act, 1996.

Section 34 of the "Act" gives an overriding effect to the provisions of the Act.

The "Act" came into force on 24th June, 1993. On the day the "Act" came into force, in the field of arbitration law, there was a statutory law called the "Arbitration Act, 1940". Therefore, it is obvious that in view of Section 34, the provisions of the "Act" did override the provisions of the Arbitration Act, 1940 and as such, Section 34 of the Arbitration Act, 1940 which is analogous to the provisions of Section 8 of the new Arbitration Act of the year 1996 became powerless in so far as it related to the pendency of a recovery application by a Bank before a Tribunal established under the "Act". Consequently, proceedings before the Tribunal established under the "Act" were not to be stayed even though there was an arbitration agreement between the borrower and the lender-bank.

There is no doubt that the aforesaid legal position existed till the Arbitration and Conciliation Act, 1996 (the new Act on the arbitration Law) came into force. A doubt could have been raised that after commencement of the Arbitration and Conciliation Act, 1996, provisions of its Section 8 could come into play even on those recovery proceedings, which were pending before a Tribunal established under the "Act" in view of the fact that the Arbitration and Conciliation Act, 1996 was a later Act than the "Act" under which the the proceedings in the OA are pending. But, in my view, this doubt could not sustain because of the special features of the Act, which as per the law laid down by Hon"ble the Supreme Court as well, has exclusive jurisdiction to adjudicate the recovery claims of banks against the borrowers. In my view, as against the provisions of the "Act", which is a special statute, Section 8 of the Arbitration and Conciliation Act, 1996 is a general legislation even though it may be a special legislation so far as law of contract or the provisions of the CPC may be concerned.

Moreover, the intention of the legislature does not appear to save the arbitration and Conciliation Act, 1996 from the overriding effect of the provisions of sub-Section (1) of Section 34 of the Act. Had it been so, the Parliament while amending sub-Section (2) of the said Section 34 of the Act in the year 2000 would have inserted the Arbitration and Conciliation Act, 1996 as it did in respect of the Sick Industrial Companies (Special Provisions) Act, 1985 and the Small Industries Development Bank of India Act, 1989. It, Therefore, can reasonably be interpreted that the intention of the legislature is to give overriding effect to the provisions of the "Act" over all other law except those enactments which are mentioned in sub Section (2) of the said Section 34. Since the Arbitration and Conciliation Act, 1996 is not mentioned in sub Section (2) of the said Section 34, as amended in the year 2000, much after the new Arbitration Act was enacted, the provisions of Section 8 of the said new Arbitration Act shall not come into play in respect of the application for recovery pending before a Tribunal

established under the "Act".

Further, it is to be found that sub Section (1) of the said Section 34, says that the provisions of the "Act" shall have effect notwithstanding anything inconsistent therewith contained in any instrument having effect by virtue of any law other than this "Act". In my view, the term "instrument" will include an agreement/contract between parties. As such, the arbitration agreement between the Appellant No. 1 and the respondent Bank gets superseded by the provisions of sub Section (1) of the said Section 34 of the Act. In this view of the matter also, Section 8 of the new Arbitration Act shall not have any effect on the proceedings before the Tribunal below in the said OA.

In view of above, I am of the clear view that the provisions of the Act shall be in operation so far as the proceedings in the OA are concerned and Section 8 of the Arbitration and Conciliation Act, 1996 shall not come into play and the Tribunal below is not bound to stay the proceedings of the OA.

There is one more reason to dismiss the appeal. The appellant No. 1 only has an arbitration agreement with the respondent Bank and the rest of the appellants do not have such arbitration agreement with the respondent Bank. Therefore, even if the claim of the respondent Bank against the Appellant No. 1 is to be referred to arbitration by the Tribunal below, still the Recovery application of the respondent Bank against rest of the defendants (Appellants 2 to 5) shall continue before the Tribunal and proceedings against them shall not be stayed. That will lead to multiplicity of litigation. Since the liability is common, joint and several, it would only be proper that adjudication is made by one authority to avoid contradictory findings and orders. Further, eventually the award, if any, against the Appellant No. 1 and the decree, if any, against the rest of the appellants shall have to be executed under the provisions of the "Act" because there is no other Court or authority having jurisdiction to recover those decretal amounts. The arbitration awards are executable by a civil Court. But the dues of the banks against the borrowers can only be recovered under the provisions of the "Act" by the Recovery Officers and not by any other court or authority. Therefore, it would be appropriate and expedient that the recovery claim of the respondent Bank against all the appellants should be adjudicated upon by one adjudicating authority."

7. The petitioners question this order on the following grounds:-

- a) That provisions of Section 8 of the Arbitration Act being mandatory, proceedings before the DRT had to be stayed.
- b) That the Arbitration Act of 1996 being a special and later statute would prevail over the provisions of the RDB Act.
- c) That Section 5 of the Arbitration Act would have an overriding effect on the provisions of the RDB Act.
- d) That provisions of Section 34(2) of the RDB Act could not be interpreted to

give any overriding effect to the provisions of this Act over the provisions of other acts.

e) That the liability ascertained by the arbitrator in his award would also be the "debt" for which respondent Bank could take execution subsequently even before the DRT.

f) That the fact of guarantors not being party to the arbitration agreement could not constitute a ground for refusal of stay of proceedings before the DRT as their liability was co-extensive with principal borrower.

8. Respondent Bank contested all this by taking the following pleas:-

i) that petitioners 2 to 5 had no locus to seek the stay as they were not parties to arbitration;

ii) that the RDB Act is a special statute conferring exclusive jurisdiction on the DRT to adjudicate upon the recovery claims of the banks and other financial institutions and the execution of their claims;

iii) that Section 8 of the Arbitration Act would not apply to recovery proceedings before the DRT because of non inclusion of the Arbitration Act in the list of statutes mentioned in Section 34(2) of the RDB Act;

iv) that Section 34 of the RDB Act gives overriding effect to the provisions of the Act against any provisions which are inconsistent in any law or against any instrument having the effect by virtue of any such law;

v) that even if claim of petitioner No. 1 was likely to be referred to arbitration those of other petitioner Nos. 2 to 5 could not as they were not parties to the arbitration agreement and it would be anomalous to refer petitioner No. 1 to arbitration and continue the proceedings before the DRT against other petitioners.

9. Learned counsel for petitioner Mr. Malhotra has gone a step forward to urge that the jurisdiction of the DRT was ousted by petitioner filing an application before it u/s 8 of the Arbitration Act. He submitted that provisions of this Section were mandatory and the judicial authority had no option but to refer the parties to arbitration. He also submitted that the Arbitration Act being a subsequent act would prevail over the DRB Act and the amendment made in 2000 in Section 34(2) would make no difference in this position.

10. Learned counsel cited Supreme Court judgments in Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Another, ; Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. (2001) 3 SCC 71; Smt. Kalpana Kothari Vs. Smt. Sudha Yadav and Others, and Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, to buttress his contentions. Interestingly he even sought support from the Supreme Court judgments in Allahabad Bank Vs. Canara Bank and Another, .

11. Petitioners application u/s 8 of the Arbitration Act should have been

dismissed otherwise also for not seeking any reference to arbitrator in terms of the invoked arbitration clause and for not satisfying its requirements. This application though labelled u/s 8 only sought stay of the proceedings before the DRT which could not be done under this and as there was no provision in the Act providing for stay of proceedings, the application deserved rejection on merit also. But since both the DRT and the DRAT had held Section 8 of the Arbitration Act inapplicable to the proceedings before the DRT throwing up several legal issues in process, there is no escape from coming into grips with these to lay the controversy at rest for good.

12. The crucial issues that call for close examination and consideration are:-

- i) whether the provisions of Arbitration Act being the later Act would prevail over those of the RDB Act;
- ii) Whether non-obstante clause of Section 5 of the Arbitration Act would override that of Section 34 of the RDB Act;
- iii) Whether Section 34(2) of the RDB Act was inconsequential even though it did not include the Arbitration Act in the list of enactments which fell outside its purview.

13. The RDB Act of 1993 establishes the Tribunals for expeditious adjudication under the Recovery due to Banks and Financial Institutions, if the debt is more than 10 lakhs. Section 17 empowers the Tribunal to entertain and decide applications of these Banks and Financial Institutions in this regard. Section 18 ousts the jurisdiction of any court or authority which otherwise would have had the jurisdiction of adjudicating all such claims except that of the Supreme Court and the High Court under Articles 226 and 227 of the Constitution. Section 31 empowers transfer of all pending suits and proceedings before Courts/authorities to the DRT including execution proceedings. Section 34 provides that provisions of the RDB Act would have overriding effect notwithstanding anything inconsistent contained in any law for the time being in force or any instrument having effect by virtue of any law other than this Act. Sub Section (2) of this Section saves some enactments but not the Arbitration Act from the purview of this Act. As this Section would have a material bearing on the view to be taken on the issues involved, it would be reproduced as under:-

S.34: Act to have over-riding effect-

1) Save as otherwise provided in Sub-Section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

2) The provisions of this Act or the rules made there under shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Ltd,

1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

14. A Survey of these provisions and the appreciation of their true import leaves no scope for doubt that the adjudication of the recovery claims by the Banks and Financial Institutions and the recovery of the amount by execution of the certificates passed by the DRT fall within the exclusive jurisdiction of the Tribunal ousting the jurisdiction of any other court or authority to go into or deal with such claims. This is how the Supreme Court perceives the nature of the jurisdiction in Allahabad Bank's case (Supra):-

"21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate u/s 19(22) [formerly u/s 19(7)] to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word "recovery" in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate u/s 19(22). u/s 18, the jurisdiction of any other court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Articles 226 or 227 of the Constitution.) This is the effect of Sections 17 and 18 of the Act.

15. Coming to the Arbitration Act, 1996, it consolidates the law and amends it relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral award and also defines the law relating to conciliation on the basis of the Model Law on International Commercial Arbitration adopted by the UN Commission on International Trade Law (UNCITRAL), 1985. The Act came into force from 16th August, 1996 and its notable features are that it minimizes judicial intervention and reduces the grounds of challenge to the award. The object of the Act is to ensure speedy decision of the disputes between the parties.

16. Section 5 & 8 of the Act assume crucial importance for purpose of resolving the present controversy and require to be extracted hereunder:-

Section 5:- Extent of judicial intervention-Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

Section 8:- Power to refer parties to arbitration where there is an arbitration agreement-

1) A judicial authority before which an action is brought in a matter which is the

subject of an arbitration Agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

2) The application referred to in sub-Section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

3) Notwithstanding that an application has been made under sub Section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

17. Section 5 provides for the extent of judicial intervention in matters of arbitration governed by part I and lays down that notwithstanding anything contained in any other law for the time being in force, no judicial authority shall intervene except if so provided in this part. The non-obstante clause in this Section is also limited to part 1 of the Act.

18. Section 8 falls within part 1 and provides for the power to refer parties to arbitration where there is an arbitration agreement. It enjoins upon a judicial authority before which an action is brought to refer it to arbitration, if the party applies for it, attaches the original copy of the arbitration agreement and so on. The judicial authority is obliged to refer if the party satisfies the condition of this provision. But if the party fails the jurisdiction to continue, the proceedings before the judicial authority remains intact.

19. It is no more rest integra that the provision of Section 8 are mandatory in nature. But that by itself should not be taken to mean that it authorises an automatic or mechanical reference to arbitration. On the contrary the reference is dependant on the requirements to be satisfied by the parties. The Supreme Court had the occasion to deal with this Section in Sukanya Holdings Case. It observed as under:-

"For interpretation of Section 8, Section 5 would have no bearing because it only contemplates that in the matters governed by Part I of the Act, judicial authority shall not intervene except where so provided in the Act. Except Section 8, there is no other provision in the Act that in a pending suit, the dispute is required to be referred to the arbitrator. Further, the matter is not required to be referred to the Arbitral Tribunal, if 1) the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator; 2) in a pending suit, such application is not filed before submitting first statement on the substance of the dispute; or 3) such application is not accompanied by the original arbitration agreement or duly certified copy thereof. This would, Therefore, mean that the Arbitration Act does not oust the jurisdiction of the Civil Court to decide the dispute in a case where parties to the Arbitration Agreement do not take appropriate steps as contemplated under sub-Sections (1) and (2) of Section 8 of the Act."

20. Which of the two Acts would prevail in this scenario is the all important question. It is by and large established that when two special statutes contain non-obstante clauses, the later statute would prevail. The rationale behind this is that the legislature at the time of enactment of the later statute was aware of the earlier legislation containing a non-obstante clause and if it wanted that later enactment should not prevail, it would provide that provisions of earlier enactment would continue to apply. But there are situations which are sometimes unforeseen and unpredictable which arise if it is not noticed that earlier statute contained a non-obstante clause or that it was omitted to provide that provisions of earlier statute would continue to apply despite the non-obstante clause of the later statute. A harmonious interpretation has to be taken recourse to resolve such conflicts.

21. The Supreme Court was faced with a similar situation in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, in which Ahmadi (J) carved out a fine exception to provide that the non-obstante clause of the later Act would prevail but if it is found that the later Act was a general Statute as against the special earlier Act then the later Act would give way to the earlier one. The learned Judge held:-

"Both the statutes have competing non obstinate provisions. Section 46-B of the 1951 Act provides that the provision of that statute and of any rule or order made there under shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force whereas Section 32(1) of the 1985 Act also provides that the provisions of the said Act and of any rules or schemes made there under shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 22(1) also carries a non obstinate clause and says that the said provision shall apply notwithstanding anything contained in Companies Act, 1956 or any other law. The 1985 Act being a subsequent enactment, the non obstinate clause therein would ordinarily prevail over the non obstinate clause found in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 Act is a special one. In that event the maxim generalia specialibus non derogant would apply."

22. This legal position was left undisturbed by the Supreme Court in Solidaire India Ltd case in which the judgment in Maharashtra Tubes was noticed though on facts and on harmonious interpretation of the two statutes it was held that the Special Courts Act, 1992 would prevail over the Sick Industries Act, 1985. The Court said:-

"It is settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted. If an interpretation is given that the Sick Industrial Companies (Special Provisions) Act, 1985 is to prevail then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is to prevail. On such an interpretation the objects of both would be fulfilled and

there would be no conflict. It is clear that the Legislature intended that public monies should be recovered first even from sick companies. Provided the sick company was in a position to first pay back the public money, there would be no difficulty in reconstruction."

23. The position that a Special Act could also be treated as a general Act in certain circumstances was further reiterated by the Supreme Court in Allahabad Bank's case (Supra). The Court first dealt with the principles of purposive interpretation which was applied by it in favor of jurisdiction and powers of the company Court in Sudarsan Chits (I) Ltd. Vs. O. Sukumaran Pillai and Others, and took the view that even while applying this principle, the purpose of the RDB Act was more superior because it intended to provide a speedy and summary remedy for recovery of thousands of crores which was due to Banks and to the financial institutions.

24. On the proposition that even a special statute could be treated as a general statute, in a reference to the tussle of overriding provisions of Companies Act and the RDB Act, it said:-

"There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and again as a general statute vis-a-vis yet another legislation. Such situations do arise as held in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, where it was observed:-

"For certain cases, an Act may be general and for certain other purposes, it may be special and the Court cannot blur a distinction when dealing with the finer points of law."

25. The legal position that emerges from all this is:-

1) That the Debt Recovery Tribunal established under the RDB Act enjoys the exclusive jurisdiction to adjudicate upon and execute the recovery claims of the Banks and other Financial Institutions and the jurisdiction of all Courts and authorities which otherwise enjoyed this jurisdiction is ousted barring that of the Supreme Court and the High Court.

2) That the RDB Act is the special statute catering to the recovery of debts by the Banks and other Financial Institutions and that it was enacted to provide for summary and speedy recovery of crores and crores of rupees of public money.

3) That in case of inconsistent and conflicting provisions in the two special statutes, the latter statute would prevail over the earlier one provided one of the two statutes is not treated as a general statute qua the other in which case the one surviving as special statute would override, no matter whether it was enacted earlier in point of time.

26. Given regard to all this, we find no difficulty in taking the view that the RDB Act would prevail over the Arbitration Act even though it was the later Act. This is so for variety of reasons. Firstly because if the RDB Act conferred exclusive

jurisdiction on the Tribunals established by it to adjudicate upon and execute the recovery claims of the Bank and other financial institutions to the exclusion all other Courts and authorities except the Supreme Court and the High Court, which position is laid down and affirmed by the Supreme Court, then the Arbitrator assuming this jurisdiction u/s 8 of the Arbitration Act could not be countenanced despite the mandatory nature of its provisions. Otherwise the established exclusiveness of the DRT's justification under the RDB Act would be eroded and compromised which would be contrary to the legislative intent behind the DRB Act because on a simple logic. If the DRT enjoys the exclusive jurisdiction to try the recovery claims of the Banks & Financial Institutions, it so enjoys against all forums established by various statutes which would include the Arbitrator under the Arbitration Act also, the only exception made in this regard being the Supreme Court and the High Court.

27. The exclusiveness of the DRT's jurisdiction is all the more fortified by the provisions of Section 34 of the RDB Act. This Section gives all pervasive overriding effect to the provisions of the RDB Act as against any inconsistent provision in any law for the time being in force. It was amended in 2000 to exempt several enactments from the purview of the RDB Act. The Arbitration Act of 1996 which was in force at the time of amendment does not figure in this list of statutes which leave no scope for doubt that it was not intended to be so exempted and its inconsequential provisions were intended to be overridden by the provisions of the RDB Act.

28. We are unable to accept the submission that the amendment of 2000 made in Section 34 of RDB Act was inconsequential and that the exclusion of the Arbitration Act, 1996 in the list of exempted statutes through this amendment made no difference. On the contrary this amendment provides a vital clue to the legislative intent that the RDB Act was to prevail upon inconsistent provisions of all laws in force on that date except the statutes enlisted therein.

29. The next question that arises for consideration is whether Arbitration & Conciliation, 1996 which is a later special statute and which consolidates law relating to domestic arbitration, international, commercial arbitration, could be regarded as a general statute visa-vis the RDB Act, an earlier statute. We have no doubt that it possesses all the trappings of a general statute visa-vis the RDB Act. For one thing it deals with a whole lot of subjects ranging from domestic arbitration to the conciliation. Even under domestic arbitration, it brings within its ambit all sorts of matters exposing its general nature in the process. As against this, the RDB Act is a very special statute conferring exclusive jurisdiction on the Tribunal to adjudicate upon recovery claims of banks and other financial institutions running into crores of rupees and provides its own mechanism for execution of the recovery certificates passed by the DRT. It deals with only one subject and is a self contained code to achieve the object and purpose of huge amount of public money. That being so, it falls within the fine exception cared out by the Supreme Court in its several judgments laying down a same statute

could be treated as a special statute vis-a-vis one legislation and a general legislation vis-a-vis another legislation. Though the arbitration is a special statute for matters relating to domestic and international, commercial arbitration and law relating to conciliation on the basis of UNCITRAL model, but it is a general statute vis-a-vis RDB Act, which act empowers adjudication of the recovery claims of banks and financial institutions by the Tribunals set by it expressly. The RDB Act would, Therefore, override the provisions of the Arbitration Act of 1996 even though this act is a later statute.

30. We also do not see any conflict between the non-obstante clause of Section 5 of the Arbitration Act and that of Section 34 of the RDB Act because the range of the former is limited to matters governed by Part I of the Arbitration Act. Section 5 of the Arbitration Act provides for minimising the judicial intervention only in matters falling under part-I of the Act. This part comprises of 10 chapters dealing with matters related to domestic arbitration. Even in this, it permits judicial intervention in some situations. In any case provisions of this Section providing for the extent of judicial intervention can't be interpreted to give any overriding effect to the provisions of the first part of the Act over anything inconsistent contained in the RDB Act. Section 34 of the RDB Act on the other hand, gives an overriding effect to the provisions of the RDB Act. It says that provisions of this Act would have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law under this Act. Its sub Section (2) saves some statutes from the purview of this Act which include the Industrial Finance Corporation Act, the State Financial Corporation Act, the Unit Trust of India, the Industrial Reconstruction Bank of India Ltd, the SICA and the small Industries Development Bank of India Act. But it significantly leaves out the Arbitration Act, 1996 which was in force at the time of amendment in 2000.

31. We are also not impressed by the submission of learned counsel for petitioner that the jurisdiction of the DRT was ousted the moment an application u/s 8 of the Arbitration Act was filed by the party because the filing of an application under this Section does not automatically oust the jurisdiction of any judicial authority. All that this Section provides for is that the judicial authority before whom an action is brought in a matter which is the subject matter of an arbitration petition shall refer the parties to arbitration if the conditions of this provision are satisfied. If these are not satisfied, the judicial authority is not obliged to refer the matter to arbitration. The result would be that its justification would remain intact and it would be well within its rights to proceed with the matter.

32. In the light of all this we feel convinced that Section 34 of the RDB Act would have overriding effect over the inconsistent provisions of the Arbitration Act and such provisions would cease to have any application to the proceedings before the Debt Recovery Tribunal.

33. This petition is resultantly dismissed and the orders passed by the DRT and

the DRAT are affirmed.