

(2003) 02 MP CK 0096

In the Madhya Pradesh High Court

Case No : Writ Petition No. 705 of 2002 (J)

M/s P.C.C. Construction Co. and Others

APPELLANT

Vs

Debts Recovery Tribunal and Another

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 — Rule 8, 9
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20

Citation : (2003) 1 MPJR 260

Hon'ble Judges : S.P. Khare, J;Dipak Mishra, J;A.K. Shrivastava, J

Bench : Full Bench

Advocate : Kishore Shrivastava, for the Appellant; Wajid Hyder and Mr. Rajesh Maindiretta, for the Respondent

Judgement

Dipak Misra, J.

In course of adjudication of proceedings in a Court of Law sometimes vexed questions and complex situations do emerge which demand imperative penetration and intensive discernment to clear the maze and pave a luminous path through the labyrinthine so that the litigants precisely know their exact podium and become able to ventilate their grievances as permissible in law before the right forum without remaining in a slate of uncertainty and indefiniteness. Certitude ushers in the quintessential virtues of law in an organized society and the absence of the same creates a shambolic situation which is not only unwarrantable but also law is at loath and averse to countenance the same. The cases at hand fresco a picture which not only creates a stir and an unusual ado to judicial discipline but also provokes and in a way accelerates the institutional syllogistic rethinking to have a deeper and greater probe into the arena of controversy. The spinal issue spiraled to this Court when the writ petitions were instituted assailing the orders passed by the Debts Recovery Tribunal (in short "the Tribunal") on the foundation that Debts Recovery Appellate Tribunal (for short "the Appellate Tribunal") had already pronounced a

verdict that against an interlocutory order passed under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for brevity "the Act"), no appeal lies. The learned Single Judge felt that a complex situation had surfaced inasmuch as this Court in the case of M/s Earnest Health Care Limited and others Vs. Debts Recovery Tribunal and others (W.P. No. 4955/2000) placing reliance on the decisions rendered in the cases of Kavita Pigments and Chemicals (Pvt.) Ltd. and Others Vs. Allahabad Bank and Others, , M/s Shoes East Ltd. Vs. Allahabad Bank AIR 1997 Del 325 and Bank of India vs. Baroda Cables 1999 ISJ (Bom) 309 had expressed the view that any order passed by the Debts Recovery Tribunal is appealable. In (hat background, the learned Single Judge in paragraph 5 of the order dated 31.1.2002 recommended for hearing of the matter by a larger Bench as provided under Rule 9 (1) occurring in Chapter-I of the M.P. High Court Rules & Orders, Thereafter, the matter was placed before the Division Bench and the Division Bench considering the circumstances in entirety felt that the question arising for consideration required to be considered and determined by a Full Bench. That is how this batch of writ petitions has come before us.

Before we embark upon the legal issues that have been urged with vehemence, emphasis and eloquence by Shri Kishore Shrivastava, learned counsel for the petitioners, we think it apposite to uncertain the facts in Writ Petition No. 5809/2001. We may hasten to state the in course of our deliberation, we will briefly advert to the facts in other cases as we are required to finally dispose of the cases, reference having been made under Rule (9) (1) of the M.P. High Court Rules & Orders. The factual score as depicted in the writ petition is that the respondent No. 2, State Bank of Indore, instituted a proceeding for recovery against the petitioners and the respondent No. 3. After filing of the original application, the Debts Recovery Tribunal (in short "the Tribunal") instead of issuing notices to the respondents therein for filing of reply on merits received evidence on behalf of the Bank and only after such receipt the Tribunal directed issuance of notices to the defendants. The petitioners appeared on the date of appearance i.e. 20.11.2000 and filed their reply. In their written statement/ reply, the petitioners did not admit the claim put forth by the Bank and raised serious disputes with regard to the facts alleged in the petition filed by the Bank. As the tribunal had received evidence on affidavits, the petitioners filed an application under proviso to Sub Rule-6 of Rule 12 of the Debts Recovery Tribunal Procedure Rules, 1993 (in short "the Rules") to ignore the evidence that came on record by way of affidavit. The said application was dealt with by the Tribunal and by order dated 8.1.2001, Annexure P/5, it arrived at the conclusion that no case for cross-examination was made out. It is set forth in the writ petition that the application was not sought seeking indulgence of the Tribunal for grant of permission to cross-examine the deponents of the affidavits, but, objecting the procedure adopted by the Tribunal by which it had received the evidence on affidavits. Being dis-satisfied by the aforesaid order, the petitioner knocked at the doors of this Court in W.P. No. 660/2001 in which the petitioner questioned the defensibility of the order passed by the Tribunal and

simultaneously raised the issue of validity of the provisions contained in Regulations 31 & 32 of the Debts Recovery Tribunal Regulation of Practice, 1998 (hereinafter referred to as "the Regulations") on many a ground. This Court vide order dated 14.2.2001 dismissed the petition holding that the writ had been considered in Writ Petition No. 5262/2000 and the provisions in question have been held to be valid, it is contended that after passing of the aforesaid order, the petitioners by way of abundant caution filed an application for cross-examination of the deponents as the said prayer was not made in the earlier application. In the application, the petitioners set out the reasons why cross-examination was sought for. The Bank filed a reply in opposition to the said prayer. It is alleged that the prayer was made before the Tribunal to await the decision of the SLP which was preferred against the decision of this Court holding the Regulations to be in travies, but the Tribunal declined to accede to the said prayer and eventually on 5.11.2001 rejected the application indicating that the arguments were heard on application for cross-examination on earlier occasion, though as an actual fact, no arguments were ever advanced. The Tribunal came to hold that the prayer for cross-examination was not maintainable as the earlier application had been rejected on the selfsame ground. The said order is the subject matter of assail in this writ petition. As has been indicated earlier, a query was made why the petitioners had not approached the Appellate Tribunal. At that juncture, it was submitted by the learned counsel for the petitioners that the Appellate Tribunal in Appeal No. 32 of 2001 and other connected appeals has held that no appeal against an interlocutory order is maintainable. In view of that situation, it was thought appropriate that the matter should be dealt with by a larger Bench.

In course of hearing, Mr. Kishore Shrivastava, learned counsel appearing for the petitioners in all the writ petitions, submitted that though the learned Single Judge expressed the view that "an order" would include "any" or "every order" passed by the Tribunal, the said view is not correct if the scheme of the Act is scanned in proper perspective. It is contended by him that an appeal lies to the Appellate Tribunal only against the final order passed by the Debts Recovery Tribunal and not against any interlocutory or interim order. In fact, this was the sole issue before the learned Single Judge who recommended the matter to be heard by a larger Bench and eventually the Division Bench expressed the view that the matter necessitated to be adjudicated by the Full Bench. However, Mr. Kishore Shrivastava wanted us not only to dwell upon the aforesaid singular issue, but also to consider the validity of the Regulations 31 & 32 of the Regulations framed by the Tribunal.

3-A. We are conscious the second aspect which is sought to be highlighted by the learned counsel has been put to rest by the Division Bench of this Court between the selfsame parties as is manifest from the pleadings of W.P. No. 412 of 2002 that the writ petition preferred by the petitioners therein, namely, M/s Dhar Industries Ltd. and others forming the subject matter of W.P. No. 894 of 2001 was dismissed relying on the earlier judgment passed in W.P. No. 5262/ 2000

(Kishorilal Lumba Vs. Debts Recovery Tribunal and others). He said order was assailed before the Supreme Court and their Lordships of the Apex Court have dismissed the SLP in limine. However, for the sake of completeness, we will advert to the same. We reiterate, we are not delving into the niceities and subtleties of the issue whether the said matter can be dealt with in a reference of this nature but as the learned counsel argued for some time, we are inclined to devote some space to put the controversy to rest, more so, in view of the latest Apex Court decision rendered in the case of Union of India and another Vs. Delhi High Court Bar Association and others, AIR 2002 SCW 1347. Thus, three questions emerge for adjudication:

- (i) Whether interim order passed by the Tribunal is appealable before the Appellate Tribunal?
- (ii) Whether Regulations 31 & 32 of the Regulations framed by the Tribunal are invalid and deserve to be so declared?
- (iii) Whether the impugned order deserves to be interfered with in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India?

We shall proceed to burrow through the first-issue first. It is submitted by Mr. Kishore Shrivastava, learned counsel for the petitioners that Section 20 of the Act provides appeals to the Tribunal and Section 21 prescribes the deposit of amount of debt due on filing of appeal and if both the provisions are read conjointly, it would be graphically clear that no appeal except an appeal against the final order is envisaged. Learned counsel has laid emphasis on Rules 8 and 9 of the Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 (in short "the Appellate Tribunal Rules") to highlight if the said Rules are read in tune with provisions of the statute, there remains no scintilla of doubt that only final order is appealable. Mr. Shrivastava has submitted that the decisions by various High Courts wherein it has been held every order is appealable have placed reliance on section 17 of the Act, but have not kept in view the essential anatomy of Section 20 of the Act. It is urged by him that Section 17 is not an enabling provision but it is the Section 20 which is the provision conferring the right of appeal because the language used in both the provisions are quite different and distinct. It is propounded by him that Section 20 is the elan vital for preferring an appeal. It is highlighted by him that if the dictionary clause is understood in proper perspective, it would be clear as noon day that every order is not appealable and such an interpretation would tantamount to reading some thing to the statute which is not remotely present in the language in which the Act has been couched. It is contended by him, when the rules are silent with regard to the manner of filing of an appeal against an interim or interlocutory order and the format as prescribed does not so envisage, the power, even if, is vested in the Tribunal, cannot be exercised and when such power cannot be exercised, it would be a Sisyphean endeavor to lay down that an appeal lies against every order.

Mr. Wajid Hyder as well as Mr. Maindiretta, (sic) counsel appearing for the Banks in various cases have submitted that every order is appealable and provisions enshrined under Sections 17 and 20 bestow such power on the Tribunal. It is contoured by them the Rules which have been pressed into service are absolutely inconsequential as that is in the realm of objective law and that cannot govern the prescription in the main statute. It is also urged by them the Act was enacted with an avowed purpose, and recourse of appeal as provided in the 1994 Rules are to apply mutatis mutandis even in respect of an appeal preferred against the interim or interlocutory order barring an appeal which is referred to u/s 21 of the Act. In support of their contentions, they have placed reliance on the decisions rendered in the cases of Kavita Pigments and Chemicals (Supra), Bank of India vs. Baorda Cables, 1999 ISJ (Ban) 309, Shoes East Ltd. vs. Allahabad Bank (Supra), Sandeep Singh Sandhu Vs. Debt Recovery Tribunal II (1999) BC 556, M.C. Mittal and Others vs. Central Bank of India and Others passed in L.P.A. No. 9/96 decided on 18.1.1996.

To appreciate the rival submissions raised at the bar, it is appropriate to refer to the statement of objects and reasons. We are referring to the same only for the purpose of appreciating why the aforesaid Act was enacted by the Parliament and to understand the basic requisite. The enactment was made for establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or institutional thereto. That being the preamble of the Act, the scheme of the Act has to be scanned in that manner. Mr. Shrivastava has laid emphasis on Section 2 (c) which defines the "appointed day" and Section 2 (g) which defines the manner prescribed by rules made under the Act. Learned counsel has also referred to section 3 which relates to establishment of Tribunal. Learned counsel would like us to appreciate this definition and the aforesaid provision to understand that unless the rules have been prescribed as mandated under the Act, no appeal can be filed against an interim order and in any case the Tribunal would have no jurisdiction. Chapter III of the Act deals with the jurisdiction, powers and authority of Tribunals. Section 17 reads as under:

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

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

Section 17-A stipulates power of Chairperson of Appellate Tribunal and Section 18 deals with bar of jurisdiction. Section 19 deals with application to the Tribunal. Section 20 which is relevant for our present purpose enshrines appeal to the Appellate Tribunal. The said provision is reproduced below:

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.

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

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 that period.

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.

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

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

Section 21 deals with deposit of amount of debt due, on filing appeal. The said provision reads as under:

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 u/s 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.

Submission of Mr. Shrivastava is that Section 20 is the heart of the Act relating to the power of the Appellate Tribunal and the said Section postulates that an aggrieved party may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter and every appeal under sub-section (1) shall be filed in such form and accompanied by such fee as may be prescribed. It is contended by Mr. Shrivastava that fee has been prescribed in respect of this appeal and this is the power which enables an aggrieved party to prefer an appeal. He has also laid

emphasis on the word "may". It is canvassed by him that Section 17 pertains to a different realm altogether and sub-section 2 of the aforesaid Section does not enlarge the scope of appeal as Section 17 has to yield to Section 20.

In the case of Kavita Pigments and Chemicals (Supra), the learned single Judge of Patna High Court distinguished the decision rendered by the Calcutta High Court in the case of M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others, and thereafter referring to Sections 17, 20 and 21 of the Act in paragraphs 37, 39 and 40 came to hold as under:

37. Both Justice C.K. Thakkar speaking for the Division bench of Gujarat High Court in the case of (Bank of India v. Baroda Cables), 1999 I.S.J. (Banking) 309 and a learned Single Judge of Delhi High Court in the case of (M/s Shoes East Ltd. v. Allahabad Bank). reported in 1996 99 Supp ISJ (Ban) 638, AIR 1997 Del 325 have held that an appeal to the Appellate Tribunal against an interlocutory order passed by the Tribunal is maintainable. This Court is in respectful agreement with the said decisions.

This Court does not find any reason to come to the aforesaid conclusion from a reading of section 21 of the said Act. Section 21 of the said Act makes a provision that when an appeal is filed by a person and against whom the amount of debt, due to the Bank or financial institution, has been determined then such appeal shall not be entertained by the Appellate Tribunal unless the person against whom such declaration has been made makes a deposit of 75% of the amount of debt as determined by the Tribunal u/s 19 of the said Act.

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 u/s 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 point has no substance.

In the case of Baroda Cables (Supra), a Division Bench of Gujarat High Court in paragraph 14 held as under :

14. Looking to the above provisions, there is no doubt in our minds that there is no provision in the Act stating that an appeal would lie before an Appellate Tribunal only when the order is final in nature. On the contrary, looking to the above provisions in their entirety, it is clear that any order passed by the Debt Recovery Tribunal is subject to challenge u/s 20 before the Appellate Tribunal. If it is so, in our opinion, the contention of Mr. Trivedi is well-founded that the aggrieved party should approach the Appellate Tribunal for redressal of grievances.

In the case of Shoes Cast Ltd. (Supra), a learned Single Judge of the Delhi High Court in paragraph 5 expressed the view as under:

5. The object of Section 20 is to give a right of appeal to a party aggrieved by some order which affects his right or liability. It is significant that sub-section (2) of Section 17 empowers the Appellate Tribunal to entertain appeals against "any order" made or deemed to have been made by the Tribunal under the Act. Section 20 gives a right of appeal to a party aggrieved by "an order" made or deemed to have been made by the Tribunal under the Act. In the context of Sections 17 (2) and 20 (1), the words "any order" or "an order" of the Tribunal made under the Act, include every order of the Tribunal made under the Act which affects the rights or liabilities of the parties. Even an interlocutory order passed u/s 19 (6) of the Act is an order passed under the Act and is subject to appeal u/s 20 (1) provided it affects some right or liability of any party. In this view of the matter, I am fortified by the decision rendered by a Division Bench of this Court in LPA No. 9 of 1996 (Shri M.C. Mittal & Ors. v. Central Bank of India & Ors. decided on 18.1.1996). Thus, the impugned order of the Tribunal refusing to stay the proceedings is subject to appeal u/s 20 (1) to the Appellate Tribunal.

In the case of Sandeep Singh Sandhu (Supra), a learned Single Judge of Punjab and Haryana High Court scanned the provisions of the Act and eventually held as under:

7. The next question is whether the words "any order" occurring in Section 17 (2) of the Act and the words "an order" occurring in Section 20 (1) of the Act include every order passed by the Tribunal under the Act which affects the rights or liabilities of the parties, or these relate to only final order passed by the Tribunal. In the context of Sections 17 (2) and 20 (1) of the Act. I am of the opinion that the words "any order made, or deemed to have been made, by a Tribunal under this Act" occurring in Section 17 (2) of the act and the words "an order made, or deemed to have been made, by a Tribunal under this Act" occurring in Section 20 (1) relate to every order of the Tribunal made under the Act which affects the rights and liabilities of the parties. Obviously, any interim order passed u/s 19 (6) of the Act by the Tribunal, if it affects the rights or liabilities of any party, will be subject to appeal u/s 20 (1) of the Act.

In the case of M.C. Mittal and others (Supra), a Division Bench of Delhi High Court after referring to Sections 17 and 20 in paragraph 3 expressed the view as under :

3. A reading of sub-clause (2) of Section 20 shows that the Appellate Tribunal shall exercise its powers in relation "any order" made or deemed to have been made by the Tribunal. "The words "any order" would include interlocutory orders which substantially affect the rights of the parties and those words are not confined to the final disposal of the application filed u/s 19. Similarly, sub-clause (1) of Section 20 reads the words "an order" and that would also mean that an appeal lies against interim orders which substantially affect the rights of the

parties and those words are not confined to an order which finally disposes of the application before the Tribunal.

In this context, we may profitably refer to the decision rendered in the case of *Central Bank of India Vs. Shri Gokal Chand*, wherein a three Judge Bench of the Apex Court was dealing with the provisions enshrined u/s 36, 37 and 38 (1) of Delhi Rent Control Act (59 of 1958). In the said case, the Rent Controller had rejected an application praying for issue of a commission to go to the premises in question and prepare a plan thereof. Against the said order, an appeal was preferred and the Rent Control Tribunal expressed the view that no appeal lay from the aforesaid order of the Controller u/s 38(1) of the Delhi Rent Control Act, 1958. The High Court agreed with the decision rendered by the Tribunal. The Apex Court, referred to Section 38 (1) of the said statute which provides that an appeal shall lie from every order of the Controller made under the Act to the Rent Control Tribunal consisting of one person. While dealing with the concept of every order and the scope of Section 38 (1), in paragraphs 3 & 4 their Lordships expressed the view thus:

3. The object of S. 38 (1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of S. 38 (1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Ss. 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding, they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed under S. 37 (2) is an order passed under the Act and is subject to appeal under S. 38 (1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an *ex parte* order is subject to appeal to the Rent Control Tribunal.

Similar considerations have induced the Courts to give a limited construction on the apparently wide words of other statutes conferring rights of appeal. Section 202 of the Indian Companies Act, 1913 confers a right of appeal "from any order or decision made or given in the matter of the winding up of a company by the Court. In *Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others*, this

Court decided that these words, though wide, would exclude merely procedural orders or those which did not affect the rights or liabilities of parties.

After noticing the aforesaid pronouncements we think it condign to deal with another facet of submission of Mr. Kishore Shrivastava that no rules having been prescribed, it is an exercise in futility to state that an appeal lies. Emphasis has been laid on the unworkability of the provisions. The 1994 Rules deals with the procedure before the Appellate Tribunal. Rule 8 deals with fee and Rule 9 stipulates in regard to deposit of amount of debt due. We think it apropos to reproduce both the rules.

8. Fee. (1) Every memorandum of appeal u/s 20 of the Act shall be accompanied with a fee provided in sub-rule (2) and such fee may be remitted either in the form of crossed demand draft drawn on a nationalized bank in favor of the Registrar and payable at the station where the Registrar's office is situated or remitted through a crossed Indian Postal Order drawn in favor of the Registrar and payable in Central Post Office of the Station where the Appellate Tribunal is located.

(2) The amount of fee payable in respect of appeal u/s 20 shall be as follows:

Amount of debt due

Amount of fees payable

Less than Rupees 10 lakh

Rupees 12,000

Rupees 10 lakh or more but less than Rupees 30 lakh

Rupees 20,000

Rupees 30 lakh or more

Rupees 30,000

Deposit of amount of debt due - Where an appeal is preferred by a person referred to in section 21 of the Act, 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 u/s 19 of the Act. provided that the Appellate Tribunal may, for reasons to be recorded in writing, wave or reduce the amount to be deposited u/s 21 of the Act.

Submission of Mr. Shrivastava is that no procedure has been prescribed for preferring an appeal against interim orders. The aforesaid submission, in our considered view, is comparable to the concept of building a castle in Spain.-Rule 9 deals with respect of an appeal preferred by a person referred to in section 21. Section 21 of the Act clearly postulates deposit of amount of debt due, on filing appeal as determined by the Tribunal u/s 19, Thus, it clearly and squarely is

applicable to an appeal preferred after final adjudication and determination of the same by the Debts Recovery Tribunal. Rule 8 deals with fee qua an appeal u/s 20. We are not are not impressed by the submission of Mr. Shrivastava that it is only Section 20 which confers the power on the Tribunal to entertain an appeal. Section 17(2) uses the word "any order made" and Section 20 (1) uses the word "an order made". Though Mr. Shrivastava has made herculean endeavour to point out the difference between the terminology used in Section 17 and Section 20 on the backdrop that in one provision the word "an" is used and in another provision the word "any" is used. There is no difference between the two terms, namely an" and "any". If the words used are understood in proper perspective taking into consideration the text and the context, we are of the considered view that the expressions used in Section 17 and 20 are not repugnant to each other. In fact, they point out to a complete harmonious whole leading to a specific, precise, appropriate destination i.e. the tenability of appeal from an order or any order. The distinction which is sought to be drawn by Mr. Shrivastava on the basis of the use of the word, in our considered opinion, is absolutely fallacious. The High Court of Delhi in the case of M.C. Mittal and Others (Supra) accepted the interpretation that any order would mean interlocutory orders which substantially affect the rights of the parties. The Court presided by the learned Chief Justice M. Jagannatha Rao (as His Lordship then was) has also referred to the term "an orders" and held that the same would covey that an,appeal lies against the interim order which substantially affects the rights of the parties and those words are not confined to an order which finally disposes an application before the Tribunal. We are in respectful agreement with the meaning given to the terms "an order" and "any order" in the said judgment.

As far as the fee structure is concerned, we think it appropriate to refer to the Tribunal Rules meant for the Tribunal of the first instance. Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 deals with fee. It reads as under:

7. Application fee - (1) 1 [Every application u/s 19, interlocutory application or application for review of decision of Tribunal] shall be accompanied with a fee provided in sub-rule (2) and such fee may be remitted either in the form of crossed demand draft drawn on a nationalized bank in favor of the Registrar and payable at the station where Registrar's office is situated or remitted through a crossed Indian Postal Order drawn in favor of the Registrar and payable in Central Post Office of the Station 1[located at any place within the local limits of the jurisdiction of a Tribunal.]

1 [TABLE

S. No.

Nature of application

Amount of fee payable

Application for recovering of debts due:

(a)

Where amount of debt due is Rs. 10 lakh

Rs. 12,000

(b)

Where amount of debt due is above Rs. 10 lakh Rs.

12,000 plus

Rs. 1,000 for every one lakh of debt due or part thereof in excess of Rs. 10 lakh, subject to a maximum of Rs. 1,50,000.

Application for review

50 percent of the fee paid

Application for interlocutory order

Rs. 10

Vakalatnama

Rs. 5]

The words used here are "debts due" and the words used in the Appellate Rules are "amount of debt due". Unless the competent authority, namely, Central Government frames a different set of rules, in our considered view, the fee structure provided under Rule 8 of the Appellate Tribunal Rules would apply on all fours to all category of appeals. Any litigant who intends to have the luxury of preferring an appeal has to be guided by the procedure prescribed. He cannot be allowed to dictate terms and put forth a spacious pronouncement that he has to pay a less fee or for that matter the fee provided under Rule 8 is only applicable to appeals preferred against the final adjudication but not against the interim orders. The acceptance of this nature would defeat the science of interpretation. Judged from all this angle, we are inclined to hold that an appeal lies against any order or an order which substantially affect some rights or liabilities of the party and is not confined to the final order alone.

The second limb of argument of Mr. Shrivastava relates to validity of Regulations 31 and 32. We are dealing with this facet as an argument was canvassed, for sake of completeness and put the controversy to rest. The Regulations 31 and 32 occurring in Chapter XI of the Regulations read as under:

31. Examination of witnesses and the issue of Commissions - (a) Evidence shall be on affidavits.

(b) Provisions of Section 22 sub-section (2) of the Act and the relevant provisions of the CPC shall mutatis-mutandis apply in the matters of summoning and enforcing attendance of any person as witness and for examining him on

oath and issuing a commission for the examination of such witnesses.

Attendance of Deponent for cross examination - The Tribunal may, on the application of either party assigning reasons and after hearing, order the attendance of deponent who has sworn an affidavit for the cross-examination or may reject such application.

Submission of Mr. Shrivastava is that the said Regulations are contrary to the basic norms of adjudication as they defeat the right of cross-examination. To buttress his submission, he has placed reliance on the decisions rendered in the cases of Punjab Rao Vs. D.P. Meshram and Others, ; Sudha Devi Vs. M.P. Narayanan and Others, ; Virendra Kumar Saklecha Vs. Jagjiwan and Others, , Gagubhai & Ors. Vs. Swami Bhikhu Gangaram, AIR 1990 Gujarat. Kalpanaben M. Shah & Ors. vs. Navinchandra Jeevanlal Acharya & Ors. AIR 1995 GUJ 176, Jagdish Vs. Smt. Premlata Rai, B.N. Munibasappa vs. Gurusiddaraja Desikendra Swamigal & Ors., AIR 1959 MYS 139, State of Rajasthan Vs. Sindhi Film Exchange, , Shakoor and etc. Vs. Jaipur Development Authority, Jaipur and etc., , P. Vs. P. and R., Ram Ekwal Thakur vs. State of Bihar & Ors., AIR 1994 PAT 197, Rajinder Pershad (dead) by L.rs. Vs. Smt. Darshana Devi, , State of U.P. vs. Nahar Singh (dead) and Ors., (2001) SCC 67, Sukhwant Singh Vs. State of Punjab, and Sri Baru Ram Vs. Prasanni and Others, . As a cartload of decisions have been cited by the learned counsel for the petitioners we have catalogued the same. We are of the considered view a detailed deliberation on that score is totally unwarranted. Mr. Shrivastava has drawn our attention to few aspects from the aforesaid decisions. Relying on the decision rendered in the case of Punjabrao (Supra), Mr. Shrivastava has contended that unless the evidence is challenged in cross-examination, the same is to be accepted in entirety. He has also referred us to the decision rendered in the case of Smt. Sudha Devi (Supra) to highlight that the affidavits are not included in the definition of evidence in S.3 of the Evidence Act and can be used as evidence only if for sufficient reason Court passes an order under O.XIX, Rule 1 or 2 of the Code of Civil Procedure. The learned counsel has laid emphasis on paragraphs 12 and 14 of the decision rendered in the case of Virendra Kumar Saklecha (Supra) to highlight that an opportunity has to be given to the other side to test the genuineness and veracity of sources of information. The learned counsel has commended to the decision rendered in the case of Kalpanaben M. Shah and others (Supra) to show that the right of cross-examination cannot be throttled or thwarted. He has also drawn inspiration from the decision rendered in the case of Rajinder Pershad (Dead) by LRs (Supra) wherein the Apex Court in paragraph 4 has indicated that right to cross-examination is a valuable right. The other decisions which have been cited are on the same line. It is contended by Mr. Shrivastava the Regulations totally curtail the rights of the defendants in relation to cross-examination of witnesses by stating that evidence shall be on affidavits. The learned counsel has submitted that when the averments made in the application are combated or resisted there has to be grant of permission for cross-examination. It is proposed by him that sub-rule 6 of Rule 12 casts an obligation

on the Tribunal to permit cross-examination and no option is left with the Tribunal. To appreciate the aforesaid submission, it is seemly to reproduce sub-rule 6 of Rule 12 of the Rules 1993.

12. Filing of reply and other documents by the respondent -

1. ***

The Tribunal may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Tribunal thinks reasonable:

Provided that where it appears to the Tribunal that either applicant or defendant desires the production of a witness for cross-examination, and that such witness can be produced an order shall not be made authorizing the evidence of such witness to be given by affidavit.

It is put forth by Mr. Shrivastasva that once a desire is expressed by the defendant the Tribunal has to call for the witness and the only qualifier or rider is that such witness if available is to be produced. The aforesaid submission does not take note of the words "where it appears to the Tribunal" which occur in the proviso to sub-rule 6. Mr. Shrivastava had advanced a very novel and innovative submission when he propounded that the term "appears" would mean when the defendant even orally expresses a desire. It is his submission that expression of an impertunity is good enough. In this context, we think it appropriate to refer to the three Judge Bench decision rendered in the case of Union of India and another (Supra) wherein their Lordships while dealing with the constitutional validity of the Act took note of the contentions in paragraphs 17 and 18 which we think are necessary to be reproduced.

17. The very purpose of establishing the Tribunal being to expedite the disposal of the applications filed by the banks and financial institutions for realization of money, the Tribunal and the Appellate Tribunals are required to deal with the applications in an expeditious manner. It is precisely for this reason that S. 22 (1) stipulates that the Tribunal and the appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. Therefore even though the Tribunal can regulate its own procedure, the Act requires that any procedure laid down by it must be guided by the principles of natural justice while, at the same time, it should not regard itself as being bound by the provisions of the

Code of Civil Procedure.

On behalf of some of the respondents, it was contended that on a correct interpretation of R. 12 (6) of the Debts Recovery Tribunal (Procedure) Rules, 1993, wherever any party desires the production of a witness for cross-examination, then his evidence could not be taken by way of affidavit but it would be mandatory for the Tribunal to require the production of the witness. It was submitted that this provision is in pari material with O.19. R. 1 of the Code of Civil Procedure, and the view taken by some of the Tribunals that a party does not have a right to cross-examine a witness, whose evidence is taken on affidavit, is not correct.

Thereafter, their Lordships referred to Section 22 and Rule 12 and eventually in paragraphs 21 and 23 held as under:

21. As a result of the amendments made in the Act and the Rules, the position which would emerge is that S. 19 (1) of the Act requires the filing of an application by a bank or a financial institution for the recovery of debt to be made before a Tribunal having territorial jurisdiction. On receipt of the application, summons are issued to the defendant who has to show cause within the stipulated period as to why the relief prayed for should not be granted. A right is now given by sub-section (6) of S.19 to the defendant to claim a set off against the applicant's demand and the said written statement is to have the same effect as a plaint in a cross-suit. Under sub-section (8) of S.19, the defendant is also entitled to set up a counter-claim in addition to his right of claiming a set off. Sub-section (2) of S.19 provides that after giving the applicant and the defendant an opportunity of being heard, the Tribunal may pass such interim or final order as it thinks fit to meet the ends of justice. It is after this order that a certificate is issued by the Presiding Officer to the Recovery Officer for recovery of money. Section 22 of the Act has not been amended. Therefore, reading Ss. 19 and 22 of the Act together, it appears that the Tribunal and the appellate Tribunal are to be guided by the principles of natural justice while trying the matter before them. Section 22 (1) of the Act stipulates that the Tribunal and the appellate Tribunal, while being guided by the principles of natural justice, are to be subject to the other provisions of the Act and the Rules. Rule 12 (7) provides that if a defendant denies his liability to pay the claim made by the applicant, the Tribunal may act upon the affidavit of the applicant who is acquainted with the facts of the case. In this Rule, which deals with the consideration of the applicant's bank application, there is no reference to the examination of witnesses. This sub-rule refers only to the affidavit of the applicant. Rule 12 (6), on the other hand, provides that the Tribunal may, at any time, for sufficient reason order a fact to be proved by affidavit or may pass an order that the affidavit of any witness may be read at the hearing. It is in the proviso to this sub-rule that a reference is made to the cross-examination of witnesses.

In other words, the Tribunal has the power to require any particular fact to be

proved by affidavit, or it may order the affidavit of any witness may be read at the hearing. While passing such an order, it must record sufficient reasons for the same. The proviso to R. 12 (6) would certainly apply only where the Tribunal chooses to issue a direction, on its own, for any particular fact to be proved by affidavit or the affidavit of a witness being read at the hearing. The said proviso refers to the desire of an applicant or defendant for the production of a witness for cross-examination. In the setting in which the said proviso occurs, it would appear to us that once the parties have filed affidavits in support of their respective cases, it is only thereafter that the desire for a witness to be cross-examined can legitimately arise. It is at that time, if it appears to the Tribunal, that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case that it shall require the witness to be present for cross-examination and in the event of his not appearing, then the affidavit shall not be taken into evidence. When the High Courts and the Supreme Court in exercise of their jurisdiction under Art. 226 and Art. 32 can decide questions of fact as well as law merely on the basis of documents and affidavits filed before it ordinarily, there should be no reason as to why a Tribunal, likewise, should not be able to decide the case merely on the basis of documents and affidavits before it. It is common knowledge that hardly any transaction with the Bank would be oral and without proper documentation, whether in the form of letters or formal agreements. In such an event the bona fide need for the oral examination of a witness should rarely arise. There has to be a very good reason to hold that affidavits, in such a case, would not be sufficient.

The Division Bench of this Court while upholding the validity of Regulations in the case of M/s Kishorilal Loomba and Sons (Supra) in paragraphs 10 and 11 held as under :

10. The Tribunal and the Appellate Tribunal have been empowered to regulate their own procedure, of course, subject to other provisions of the Act and the Rules. With this background, contention that where claim for summoning witness (es) is raised, the Tribunal has to proceed under sub-section (2) of Section 22 of the Act can not be accepted. It may be realised that sub-section (2) of Section 22 will apply where Tribunal decides to summon any person for examination on oath and it mentions procedure for receiving evidence on affidavit etc., but it would not over-ride the provision of sub-section (1) of Section 22. In case sub-section (2) of Section 22 is given prominence over sub-section (1) of Sections 22, the object of vesting Tribunals with powers mentioned in sub-section (1) of Section 22 would stand annihilated, defeating the purpose of the provisions and intention of the legislature. Further, result would be that the Tribunals shall have to follow dilatory procedures available under the CPC 1908 which the legislature intended to avoid by enacting the Act of 1993. Therefore, normal procedure is to receive evidence by affidavit (s) and it is only for reasons to be recorded that the Tribunals may summon the deponent for cross-examination. Consequently, it can be said that sub-section (4) of section 19 does not contemplate oral evidence. It is only in exceptional or in special circumstances looking to the nature of the

facts and the Tribunals being satisfied on pleas being raised before it that oral evidence/ cross examination may be resorted to and provisions of CPC 1908 have limited application in areas the Act prescribes and where some of its principles may be found helpful which are not inconsistent with the Act and the rules. Similar view has been taken by this Court in the decisions in W.P. No. 2694 of 2000 (M/s. Kishorilal Loomba Cold Retreads Pvt. Ltd. and others vs. Bank of India and another) dated 21.7.2000, W.P. No. 4475 of 2000 (M/s Shree Santoshi Pipe works and others vs. Debts Recovery Tribunal and others) dated 9.8.2000, W.P. No. 4764 of 2000 (M/s Maheshwari Agencies and another vs. Debts Recovery Tribunal, Jabalpur and others) dated 19.8.2000 and W.P. No. 4775 of 2000 (Omprakash Mantri vs. Debts Recovery Tribunal and others) dated 19.8.2000.

In the aforesaid background, statement that Regulations 31 and 32 of the Regulations of Practice 1998 are in excess of the authority u/s 22 of the Act is not sustainable. Construing them in manner submitted by the petitioners would make the purpose of the Act and the scheme redundant. Rather harmonious and purposeful meaning has to be assigned to the provisions of the Act, Rules and Regulations to achieve the basic purpose of the legislation.

In our considered view, the view expressed by the Division Bench of this Court is absolutely in consonance and unquestionably in accord with the view expressed later on by the Apex Court in the case of Delhi High Court Bar Association and others (supra). The perception of the learned counsel in regard to the term "appears" is inconceivable even by conferring the allowance of dialectics of "perceptual shift". It is worth noting here that if a case is made out as per Regulation 32, the Tribunal shall order the attendance of deponent who has sworn an affidavit. That is what has been held in paragraph 23 of the judgment rendered by the Apex Court in the case of Delhi High Court Bar Association and others (Supra). Therefore, we have no hesitation in holding that Regulations 31 and 32 do not transgress the limits stipulated u/s 22 of the Act or sub-rule (6) of Rule 12 of the 1993 Rules. Hence, they are absolutely valid and impeccable.

The next facet of argument of Mr. Shrivastava even if an appeal lies, there is no bar to interfere in the writ petition. It is urged by him an alternative remedy does not abridge or curtail the power of judicial review of this Court under Articles 226 and 227 of the Constitution of India. It is noticeable that Section 18 of the Act deals with bar of jurisdiction. It reads as under:

18. Bar of jurisdiction. - On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to the matters specified in section 17.

We have referred to the aforesaid Section only to show that the powers of the High Court under Articles 226 and 227 are not touched or abridged, and rightly

so. In the case of *L. Chandra Kumar Vs. Union of India and others*, , a Seven Judge Bench in paragraphs 78 and 79 have held as under:

78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. (#) These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior Courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior Courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior Courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate Courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.

Thus, it cannot be said a writ petition is not maintainable before the High Court but a significant one, the moot question is whether when an alternative remedy

lies, this Court should interfere. To put it differently: Whether this Court (sic) issue a prerogative writ in the nature of certiorari when there is availability of alternative remedy provided under the Act itself. In this context, we may profitably refer to the decision rendered in the case of Zila Parishad Moradabad Vs. Nundan Sugar Mills, Amroha, wherein the Apex Court held as under:

A provision like Section 128 of the U.P. District Boards Act for an appeal against an assessment to tax is there, but the fact that the petitioner has not availed of it, does not oust the jurisdiction of the High Court to entertain a petition under Article 226 and it is for the High Court to exercise its discretion whether to entertain the petition or not. Where there is nothing to show that the discretion has not been properly exercised by the High Court the Supreme Court would not interfere.

In the case of Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, the Apex Court ruled thus:

...A writ of certiorari is discretionary: it is not issued merely because it is lawful to do so. Where the party feeling aggrieved by an order of an Authority under the income tax Act has an adequate alternative remedy which he may resort to against the improper action of the authority and he does not avail himself of that remedy the High Court will require a strong case to be made out for entertaining a petition for a writ. Where the aggrieved party has an alternative remedy the High Court would be slow to entertain a petition challenging an order of a taxing authority which is ex facie with jurisdiction. A petition for a writ of certiorari may lie to the High Court, where the order is on the face of it erroneous or raises question of jurisdiction or of infringement of fundamental rights of the petitioner.

In the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, the Apex Court expressed thus:

The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art. 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or nonest and that in all other cases, Courts should not entertain petitions under Art. 226 or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and in a matter which is thus pre-eminently one of discretion, it is not possible, or even if it were, it

would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.

in this context, we may usefully refer to the decision rendered in the case of State of Uttar Pradesh and Others Vs. Indian Hume Pipe Co. Ltd., wherein their Lordships laid down as under :

In the instant case, the question as to what is the true connotation of the words "sanitary fittings" and whether the hume pipes manufactured and sold by the respondent were sanitary fittings within the meaning of that expression was a question of law and since the entire material on the basis of which this question could be determined was placed before the Sales Tax Officer and it pointed in one and only one direction, namely, that the hume pipes were not sanitary fittings and there was nothing to show otherwise, the High Court was justified in entertaining the writ petition. Moreover, there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is settled practice of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case entertained the writ petition and decided the question of law arising in it and in our opinion rightly.

In this regard, the decision rendered in the case of Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, is worth noting. In the aforesaid decision, their Lordships spoke thus:

Where public bodies, under color of public laws, recover people's money, later discovered to be erroneous levies, the Dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of "alternative remedy" since the root principle of law married to justice, is *ubi jus ibi remedium*.

Their Lordships further proceeded to lay down as under:

Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the Court, exercising this, flexible power, to pass such order such as public interest dictates and equity projects. Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon consideration as of public interest....

In the case of Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, the Apex Court held thus:

Further, it is well established that an alternative remedy is not an absolute bar to

the maintainability of a writ petition, when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Art. 226 of the Constitution on the ground of existence of an alternative remedy. In the instant case, the Vice-Chancellor had no power of review and the exercise of such a power was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity; such an order could be challenged before the High Court by a petition under Art. 226 of the Constitution and the High Court was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant u/s 68 of the U.P. State Universities Act.

In this context, we may profitably refer to a Division Bench decision of the Orissa High Court rendered in the case of *Sarat Chandra Panda Vs. State of Orissa and Others*, wherein it has been held as under :

Where the writ petition is filed by the members of the Committee of Management of a co-operative society governed by the Orissa Co-operative Societies Act to challenge a notice to show cause against its supersession on the ground that the initiation of the proceeding is without jurisdiction as a pre-condition therefore of consultation with the financing bank of the society has not been satisfied, the bar of Art. 226 (3) cannot be invoked by saying that alternative remedy of revision and appeal is available against the final order of supersession.

In the case of *Dr. Kamala Kanta Kar Vs. Orissa State Board of Homeopathic Medicine, Bhubaneswar and Others*, , another Division Bench of the High Court of Orissa has expressed the opinion in the following terms:

It has been authoritatively held in a series of decisions of the Supreme Court as well as of this Court that the prohibition to grant relief under Art. 226 of the Constitution of India when an alternative remedy has not been resorted to is only a self-imposed limitation adopted more for the necessity of propriety than as a mandatory requirement of law and that such a policy has no application where the act complained of is that of violation of the principles of natural justice, or one of lack of jurisdiction. Even apart from it. nothing prevents the prerogative of the High Court to issue a writ of certiorari in a fit case where recourse to the alternative remedy would be unnecessary, lengthy and circuitous and the question involved for interpretation would be more appropriately decided by the High Court, such as cases involving purely questions regarding interpretation of law.

In this context we may profitably quote a passage from the decision rendered in the case of *Reg. Vs. Hillington, London Borough Council*, 1974 1 QB 720, wherein Lord Widgery, C.J. stated thus:

It has always been a principle that certiorari will go only where there is no other equally effective and convenient remedy...

The statutory system of appeal is more effective and more convenient than

application for certiorari and the principal reason why it may prove itself more convenient and more effective is that an appeal to (say) the secretary of state can be disposed of at one hearing whether the issue between them is a matter of law or fact or policy or opinion or a combination of some or all of these... whereas of course an appeal for certiorari is limited to cases where the issue is a matter of law and then only it is a matter of law appearing on the face of the order.

An application for certiorari has however this advantage that it is speedier and cheaper than the other methods and in a proper case therefore it may well be right to allow it to be used... I would, however, define a proper case as being one where the decision in question is liable to be upset as a matter of law because on its face it is clearly made without jurisdiction or in consequence of an error of law.

We have referred to the aforesaid decisions only to indicate that there are no inflexible rules for exercise of discretion by High Court while issuing the prerogative writ of certiorari. It would depend upon the facts of each case. As has been held in the case of *Indian Hume Pipe Co. Ltd.* (supra), there is no impropriety in the use of discretion if the adjudication involves a pure question of law. In the case of *Champalal Binani* (Supra), the Supreme Court expressed the view that where the order is on the face of it erroneous and raises question of jurisdiction, the High Court can indubitably entertain the writ petition. Thus, it is graphically clear that there is no bar for entertaining a writ petition under Articles 226 and 227 of the Constitution of India where an alternative remedy has not been taken resort to. It is a self imposed restraint and restriction by the Court itself. While exercising such power under the Constitution the Court is required to keep in view certain factors. As has been noticed when an order is passed without jurisdiction or when principles of natural justice are violated or when the virus of an Act is challenged, or where enforcement of any of the fundamental right is sought or where a pure question of law arises or where a strong case has been made out the Court may exercise the discretion. It is further noted that the Apex Court has also observed that the grounds are not exhaustive. No strait-jacket formula can be laid down. It will depend upon the facts of each case.

In view of the aforesaid pronouncement of law, it is discernible that list is not exhaustive but only illustrative. It would depend upon the facts and circumstances of each case. In the present case, we are of the considered opinion, the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is not warranted to be exercised. If the rights or liabilities of the petitioners have been substantially affected, they may approach the Tribunal. However, as the writ petition was pending before this Court, we can only grant leave to the petitioners to prefer an appeal within a period of 6 weeks and the Tribunal shall not dismiss the appeal on the ground that it is barred by limitation. At the beginning, we stated that we will be stating the facts in each case. In every case, on a proper scanning, it transpires that the petitioners filed

an application seeking grant of privilege to cross-examine the deponent. The prayer having been declined, they have visited this Court. Thus, in essence the grievance pertains to refusal of permission of cross-examination. Hence the directions issued herein shall apply to all the cases.

In view of our premised reasons, we pigeon-hole and itemize our conclusions as under:

(a) An appeal against an order which substantially affects the rights or liabilities of a party lies to the Appellate Tribunal.

(b) Regulations 31 and 32 of the Regulations framed by the Debts Recovery Tribunal, Jabalpur are intra virus.

(c) Despite the statutory remedy provided for preferring an appeal in exceptional circumstances the writ court can exercise its jurisdiction under Articles 226 and 227 of the Constitution of India and such exercise of power would depend upon the facts and circumstances of the case.

(d) A prayer for cross-examination if made in accordance with Regulation 32 of the Regulations, the Debts Recovery Tribunal may entertain the same if the circumstances so warrant.

(e) The orders impugned in this batch of writ petitions are not so which call for interference in exercise of extra ordinary or discretionary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

(f) It would be open to the petitioners in each case to prefer an appeal before the Appellate Tribunal within a period of 6 weeks and on such filing of appeal, the Tribunal shall not dismiss the appeal on the ground of limitation.

(g) It would be open to the petitioners to put forth their contentions before the Tribunal that the order impugned has substantially affected their rights or liabilities.

(h) Any decision, rendered by this Court that runs counter to the view expressed hereinabove would be deemed to have incorrectly laid down the law and thereby stands overruled.

The writ petitions are accordingly disposed of without any order as to costs.