

(1996) 09 CAL CK 0033

In the Calcutta High Court

Case No : C. O. No's. 51 of 1996, 2905, 2970 and 2968 of 1995 and 1733 of 1996

M/s. Pratap Ch. Dey and others

APPELLANT

Vs

Allahabad Bank and others

RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Banks and Financial Institutions Act, 1993 — Section 10, 11, 12, 13, 14
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 34 Rule 4, 60
Constitution of India, 1950 — Article 226, 227
Railway Claims Tribunal Act, 1987 — Section 13(1)

Citation : AIR 1997 Cal 96 : (1998) 94 CompCas 642

Hon'ble Judges : Tarun Chatterjee, J

Bench : Single Bench

Advocate : S.P. Roychodhury, for the Appellant; Hirak Mitra, for the Respondent

Judgement

1. As a common question of law arose in these applications under Article 227 of the Constitution, I decided to take up the hearing of these applications analogously and these applications are now being disposed of by this common judgment.

2. The question of law that needs to be decided in these applications under Article 227 of the Constitution is formulated below :

Whether the Tribunal constituted under the Debts (Due to Bank and Financial Institutions) Act, 1993 (hereinafter referred to as the "said Act of 1993") shall decide an issue of jurisdiction as a preliminary issue of law by exercising power conferred on the Civil Courts under Order 14, Rule 2 of the CPC first before deciding the other issues or it shall decide such issue along with other issues at the time of final disposal of the proceedings.

3. For the purpose of deciding the fore-said question, the facts which would be relevant for coming to a proper decision are enumerated below:--

By the introduction of the said Act of 1993 some of the suits which were filed in the civil Court or in the original side of this Court were transferred to the tribunal commonly known as debt recovery tribunal and in some of the cases applications u/s 19 of the said Act of 1993 have been made for recovery of money and for other declaration. In the plaint of some of the suits which have been subsequently transferred to Debt Recovery Tribunal, the bank has claimed declaration of charge over the asset and properties mentioned in the plaint, sale of the same and also, a decree under Order 34, Rule 4 of the Code of Civil Procedure. The Bank has also claimed to be the holder of equitable mortgage in respect of the Immovable properties as mentioned in the plaint. According to the petitioners who are the loanee, the suits that have been filed are mortgage suits relating to mortgage of Immovable property and also some moveables. Applications were filed by the loanees before the Bank Recovery Tribunal praying for return of the plaint on the ground that the Bank Recovery Tribunal had no jurisdiction to entertain a mortgage suit and till such decision was made on the aforesaid applications further proceedings before the Bank Recovery Tribunal shall remain stayed. On the aforesaid applications the Bank Recovery Tribunal has passed orders directing that the jurisdictional point shall be decided along with the main issues raised in the proceeding. Against these types of orders the petitioners who are the loanees before the Bank Recovery Tribunal have come up to this Court under Article 227 of the Constitution. Before I take up the question raised as quoted herein above for decision a preliminary objection raised on behalf of the respective Banks may be considered.

4. Mr. Mitra appearing on behalf of the Allahabad Bank has contended that in view of the admitted fact that an appeal lies against the orders passed by the Bank Recovery Tribunal under the Act, the applications under Article 227 of the Constitution are not maintainable in law. According to Mr. Mitra, in view of the specific provisions as provided in Section 20 of the said Act of 1993 which clearly says that 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, the question of entertaining a petition under Article 226 or 227 of the Constitution cannot arise at all. From a glance of the aforesaid provisions of the said Act of 1993, it may be said that an application under Article 226 or 227 of the Constitution cannot be held to be maintainable in view of the said provision but considering the scheme and object of constituting the Bank Recovery Tribunal under the said Act of 1993 and in particular the provisions of Section 18 of the said Act of 1993, I am of the view that the application under Article 226 or 227 of the Constitution is maintainable in law. Section 18 of the said Act of 1993 bars jurisdiction, powers or authorities in relation to the matters specified in Section 17 from the appointed day. But Section 18 clearly says that the bar of jurisdiction of the Court to entertain a proceeding in relation to the matters specified in Section 17 of the Act by 1993 would not be applicable to the Supreme Court and the High Court exercising jurisdiction under Article 226 or 227 of the Constitution. Therefore, Section 18 of

the said Act of 1993 clearly exempts the bar of jurisdiction in the case of High Courts while exercising power under Article 226 or 227 of the Constitution. Therefore, it can be safely said that even if an appeal lies against an order of the Bank Recovery Tribunal under the Act itself, in an appropriate case, the High Court still retains its jurisdiction to entertain a petition either under Article 226 or 227 of the Constitution which is moved against an order of the Bank Recovery Tribunal. It is now well settled principle of law that even if there is an alternative remedy in the Act to file an appeal against a particular order of any tribunal, it is still open to an aggrieved party to file an application under Article 226 or 227 of the Constitution against such an order of the Tribunal, if it is found that the order passed by the Tribunal is without jurisdiction or arbitrary or principle of natural justice has been denied. If any authority is required to be cited on this question I may safely refer to the decisions of the Supreme Court in the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, and the case of Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, .

5. Therefore, in view of the aforesaid discussions made hereinabove, I am of the view that the application under Article 226 or 227 of the Constitution is maintainable in an appropriate case. There is another aspect of this matter. The power of the High Court under Article 226 or 227 of the Constitution is the power of superintendence of the High Court over all Courts and tribunals which are within the territories in relation to which the High Court exercises its jurisdiction. The Supreme Court in the case of Jetha Bai and Sons, Jew Town, Cochin and Others Vs. Sunderdas Rathenai and Others, has also expressed the same view that the legislature has not taken away any indeed it cannot take away the power of superintendence of the High Court under Article 227 of the Constitution over all Courts and tribunals which are within the territories in relation to which the High Court exercises its jurisdiction. Therefore, I am of the view that an application under Article 226 or 227 of the Constitution is maintainable in law against the impugned order passed by the Bank Tribunal in spite of the fact that a provision for appeal under the Act has been made. The decision in the case of Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, is not the authority for the proposition that when there is alternative remedy for filing an appeal against the order of the tribunal in the statute the writ jurisdiction of the High Court cannot at all be invoked. In that decision the Supreme Court was observing that a writ application against a show cause notice without showing cause cannot be entertained by the High Court under Art. 226 of the Constitution as there was involvement of disputed questions of fact which the writ Court cannot decide at that stage. Therefore this case cannot be applied for the purpose of holding that a writ petition is not at all maintainable against an order which is appealable under the statute. That apart, in my view, Section 20 of the Act of 1993 contemplates an appeal to be filed against any final order passed by the Tribunal. It is true that in Section 20 of the Act of 1993 it has been said that any person aggrieved by an order made by the Tribunal may prefer an

appeal to the Appellate Tribunal. Mr. Mitra relying on the word "an order" as used in Section 20 of the Act submitted that any order that would be passed by the tribunal was appealable u/s 20 of the Act. In my view, considering the object and scheme of the Act and the relevant provisions of the Act it cannot be held that any order that would be passed by the tribunal would be appealable u/s 20 of the Act. It was rightly argued by Mr. Roychoudhury appearing on behalf of the petitioners, that the provision for appeal shall be applicable only in case a final order is passed by the tribunal. If we read the provisions in Chapter IV of the said Act of 1993 along with Sections 17 and 18 of the Act it would be evident that the word "an order" used in Section 20 of the Act of 1993 relates to a final order passed by the tribunal in a proceeding u/s 19 of the Act of 1993. Chapter IV deals with procedure of tribunals and disposal of the applications filed before the tribunal. Section 19(4) of the said Act of 1993 contemplates final order to be passed on the application to the tribunal. Section 21 requires deposits of amount of debt due on filing an appeal. It clearly says that 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 75% of the amount of debt so due from him as determined by the tribunal u/s 19 of the Act. From a plain reading of Section 21 of the said Act of 1993 it is clear that an appeal is to be preferred by any person from whom -the amount of debt is due to a bank or Financial institution that is to say on disposal of the applications u/s 19 of the Act, the bank recovery tribunal determines the amount of debt which is payable to the bank or Financial institution by the loanee. Secondly, such appeal cannot be entertained by the appellate tribunal unless such person has deposited in the appellate tribunal 75% of the amount of debt so due from him as determined by the tribunal u/s 19. From this it is also clear that until and unless a final order on the application u/s 19 of the Act is passed, the question of determination of dues payable by the loanee cannot arise at all. Thirdly the section itself is very clear because it has clearly stated that the amount of debt so due from a loanee is determined by the tribunal u/s 19 of the Act. Therefore, in my view, the appeal u/s 20 of the Act shall be filed only against a final order of the bank recovery tribunal and not against any order that may be passed by it. Admittedly in these cases the question of determining the amount due to the banks and/or financial institutions cannot arise at all as the proceedings u/s 19 of the Act by which such determination shall be made by the tribunal have not yet been disposed of. The orders challenged in these applications under Article 227 of the Constitution relate to the orders passed by the tribunal directing the jurisdictional point to be decided at the time of final disposal of the proceedings u/s 19 of the Act. There is another aspect of this matter. In Section 18 of the Act which bars jurisdiction of the Court to exercise any jurisdiction, powers or authority in relation to the matters specified in Section 17 has exempted the Supreme Court and the High Court exercising jurisdiction under Article 226 or 227 of the Constitution. Therefore, in view of Section 18 also, I am of the view that even if an appeal lies

against any order passed by the tribunal the High Court in the exercise of the extraordinary jurisdiction under Article 226 or 227 of the Constitution can pass necessary orders or set aside any order passed by the Tribunal which is not final in nature if such orders were passed in relation to the matters specified in S. 17 of the Act. It is now well settled that interpretation of a particular provision of a statute should be such so as to make the provision workable and consistent with the object of the Act and purpose for which the Act has been enacted, (See AIR 1982 Cal 314, *Ram Avatar v. Calcutta Corporation*). Therefore on a proper construction of the word "an order" as mentioned in S. 20 of the said Act of 1993 it seems that "an order" means a final order passed by the Tribunal under S. 19 of the said Act of 1993. I am informed that the Appellate Tribunal constituted under the Act has been established in Bombay. Against an arbitrary interlocutory order passed by the Tribunal in Calcutta, if an appeal is to be preferred in Bombay a litigant has to travel to Bombay where the Appellate Tribunal has been established. If this is accepted, in my view, the purpose of the Act of 1993 for which the Act has been enacted would be totally frustrated and the entire system shall become unworkable as a litigant either it is a bank or a loanee has to approach the Appellate Tribunal at Bombay by filing an appeal against any simple interlocutory order of the Tribunal which shall involve not only huge expenses but also considerable period of time and the delay in disposal of appeals shall defeat the purpose of the Act, 1993 which has been enacted for the purpose of speedy disposal of the petitions under S. 19 of the said Act of 1993 and to recovery dues of the Banks at an early date. As noted already the object of introducing the said Act of 1993 as it appears from the preamble of the said Act of 1993 was expeditious adjudication of recovery of debts due to banks which purpose shall not be achieved if against all orders, appeals are to be preferred under S. 20 of the said Act of 1993. In this connection S. 19(8) is also very important. Section 19(8) says that the application under S. 19 shall be dealt with by the Tribunal as expeditiously as possible and an endeavour shall be made by it to dispose of such applications within six months from the date of receipt of the application. In my view, therefore, the legislature by introducing the said Act of 1993, has not intended an appeal to be filed under S. 20 of the Act of 1993 against all orders including interlocutory orders because of the fact that if that was the position then expeditious disposal of applications under S. 19 of the Act of 1993 cannot be done in view of the fact that the pendency of the appeals against interlocutory orders before the Appellate Tribunal at Bombay would defeat that purpose. It is well known that disposal of an appeal by the Appellate Tribunal would at least take some time and against all orders passed by the Tribunal, appeals are to be filed then certainly the object for which the said Act has been enacted cannot be achieved. Therefore, in my view, Mr. Roychoudhury, was perfectly justified in submitting that the appeal under S. 20 of the Act is really meant against the final order passed under S. 19 of the Act. Again from a plain reading of the statement of objects and reasons for introduction of the said Act of 1993 it also appear that there was an urgent need to constitute tribunals for recovery of dues of banks and financial institutions by following a summary proceeding and through which

dues to the banks and financial institutions would be realised without delay. I have already dealt with the different provisions of the Act and the scheme of the same. From a careful reading of the scheme and provisions of the Act there is no difficulty in coming to a conclusion that the plain literal interpretation of the statutory provision in S. 20 of the Act produces a manifestly unjust result which could never have been intended by the legislature. Therefore, it is open to the Court to modify and interpret the language used by the legislature so as to achieve the intention of the legislature and produce a rational constitution (See , Commr. of Income Tax, Bangalore v. J. Gutla, Yadagiri). In this view of the matter also I am of the firm opinion that the word "an order" as used in S. 20 of the said Act of 1993 shall mean any final order passed by the Tribunal.

6. That being the position, I am unable to accept the preliminary objection raised by Mr. Mitra submitting that any order passed by the Tribunal is subject to filing an appeal under S. 20 of the said Act of 1993 and this Court under Art. 226 or 227 of the Constitution cannot entertain a petition filed against any such order of the Tribunal as an appeal lies against such order under S. 20 of the Act before the Appellate Tribunal. Therefore, the preliminary objection as raised by Mr. Mitra is overruled.

7. Let me now deal with the question as indicated hereinabove. According to the learned advocates appearing on behalf of the petitioners, the jurisdiction of the Bank Recovery Tribunal to entertain must be decided as a preliminary issue of law in terms of O. 14, R. 2 of the CPC in view of the fact that in the event the preliminary issue is decided against the bank and in favour of the loanee the question of going into the merits for which evidence would be required to be taken cannot arise at all and therefore, the orders of the Tribunal keeping the jurisdictional issue to be heard along with the other issues, raised in the proceeding before the Bank Recovery Tribunal were bad, illegal and without jurisdiction. Before I proceed further, it is expedient to consider the object and the scheme of the said Act of 1993. The statement of objects and reasons for enacting the Act would also be necessary to decide the question in hand. Therefore, I feel it proper to quote the statement of objects and reasons which are as follows:--

"Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Nara-simham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari

had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the report of Narasimham Committee. Whereas on September 30, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs. 5,622 crores in dues of public sector banks and about Rs. 391 crores of dues of the financial institutions. The looking up of such huge amounts of public money in litigation prevents proper utilisation and re-cycling of the funds for the development of the country."

The object of introducing of the said Act of 1993 will appear from the preamble of the Act which is as follows:--

Preamble:-- "Act to provide for the establishment of tribunals of expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto." From the statement of object and reasons for which the Act has been enacted it would be clearly evident that in recovering loan and enforcement of securities charged with the banks and financial institutions, the existing procedure for recovery of dues due to the banks and financial institutions has blocked up significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. Keeping this in mind and to find out a solution for speedy recovery of debts the Special Tribunal under the Act has been constituted.

8. While enacting the Act of 1993 it was also considered that on September 30, 1990 more than 15 lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts of India in which recovery of debts involved more than Rs. 5,662 crores in dues of public sector banks and about Rs. 391 crores of dues of the financial institutions which blocked huge amounts of public money in litigation preventing proper utilisation and re-cycling of funds for the development of the country. Keeping the statement of objects and reasons as indicated above, in mind and the object of introducing the Act of 1993, it is evident that the said Act of 1993 has been brought into action for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith and incidental thereto without any delay. Therefore, in my view, from the discussions made hereinabove, the intention of the legislature to introduce the Act of 1993 was to recover bank dues as expeditiously as possible as it was found that to recover dues of the banks and financial institutions through courts involved long delay in disposal of such cases by the Courts. Keeping this in mind, let me now proceed to consider whether the bank recovery Tribunal shall decide a preliminary issue of law regarding jurisdiction first as envisaged in O.14, R. 2 of

the CPC leaving the other issues to be decided after the preliminary issue of law is decided by it. Section 2(g) of the said Act of 1993 defines "debt" which says that "debt" means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the banks or the financial institutions or the consortium under any law for the time being in force in cash or otherwise whether skilled or unskilled, or whether payable under a decree or order of civil court or otherwise and subsisting on and legally recoverable on the date of the application. Chapter II deals with establishment of Tribunal and Appellate Tribunal. Section 3 deals with establishment of Tribunal. Section 4 of the said Act of 1993 deals with the composition of such Tribunal. Section 5 prescribes qualifications for appointment as Presiding Officer of the Tribunal. Section 6 prescribes the term of office of the Presiding Officer of the Tribunal. Section 7 deals with the staffs to be provided to the Recovery Officer of the Tribunal. Sections deals with the establishment of Appellate Tribunal. Sections 9 to 15 of the said Act of 1993 deal with composition of Appellate Tribunal, qualification for such appointment in the Appellate Tribunal and their term of office and also the staff of the Appellate Tribunal and salary and allowances to be paid to the Presiding Officer and the staffs and filling up of vacancies, resignation and removal of the Presiding Officer of the Appellate Tribunal. Section 16 of the said Act of 1993 bars the jurisdiction of the Tribunal, to question any order of removal passed by the Central Government merely on the ground of any defect in the constitution of a Tribunal or an Appellate Tribunal. Chapter III deals with jurisdiction, powers and the authority of Tribunal. Section 19 of the said Act of 1993 confers jurisdictional powers on the authorities of the Tribunal to entertain and decide applications from the banks and the financial institutions for recovery of debts due to such financial institutions and banks. Section 19(1) confers power on the Tribunal to exercise jurisdiction, power or authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. Section 19(2) of the said Act of 1993 confers powers with the Appellate Tribunal to entertain appeals against any order made or deemed to have been made by the Tribunal under the said Act of 1993. As noted hereinabove, S. 18 of the said Act of 1993 bars the jurisdiction of any court to exercise any jurisdiction powers or authority in relation to the matters specified in S. 17 of the said Act of 1993, except the Supreme Court and the High Court however are conferred with the power to exercise jurisdiction under Art. 226 or 227 of the Constitution. Chapter IV deals with procedure to be followed by the Tribunals. Section 19(1) of the said Act of 1993 deals with application to be filed before the Tribunal. Section 19(2) however, says that every application under sub-sec. (1) shall be in a form which shall be accompanied by such documents or other evidence and by such fee for filing the application as may be prescribed. Section 19(3) of the Act says that on receipt of the application under sub-sec. (1) the Tribunal shall issue summons requiring the defendant to show cause within 30 days of service of summons as to why the relief prayed for should not be granted. Section 19(4) says that the

Tribunal may, after giving the applicant and the defendant an opportunity of being heard passed such orders on the application as it thinks fit to meet the ends of Justice. Section 19(6) of the Act confers power to the Tribunal to make an interim order (where by way of injunction or stay) against the defendant to debar him from transferring, alienating or otherwise dealing with or disposing of any property and assets belonging to him without prior permission of the Tribunal. Section 19(7) of the said Act of 1993 gives power to the Presiding Officer to issue a certificate under his signature on the basis of the order of the Tribunal to the recovery officer for recovery of the amount of debt specified in the certificate. Section 19(8) however, directs the Tribunal to deal with the application filed under S. 19(1) of the Act of 1993 as expeditiously as possible, an endeavour shall be made by the Tribunal to dispose of the application finally within six months from the date of receipt of the application. As noted hereinabove, S. 20 confers power to the Appellate Tribunal to entertain an appeal against an order passed by the Tribunal. Section 21 however, says that no appeal shall be entertained by the Appellate Tribunal unless such person who is aggrieved by an order of the Tribunal shall deposit 75% of the amount of debt so due from him as determined by the Tribunal under S. 19 of the said Act of 1993. Proviso to S. 21 however, confers power on the Appellate Tribunal to waive or reduce the amount to be decided under this section, after recording reasons in writing. Section 22 of the said Act of 1993 prescribes the procedure and powers of Tribunal and the Appellate Tribunal. Section 22(1) of the said Act of 1993 says that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules the Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings. Section 22(2) of the said Act of 1993 also says that the Tribunal shall have, for the purpose of discharging their functions under the said Act of 1993, some powers as are vested in the civil Court under the Code of Civil Procedure, while trying the suit in respect of the matters mentioned in sub-sees, (a) to (h) of S. 22(2) of the said Act of 1993. Chapter V of the said Act of 1993 deals with mode of recovery of debts. Under S. 25 of the Act the recovery officer shall proceed to recover the amount of debt specified in the certificate by one or more of the following mode namely (a) attachment and sale of the moveable or Immovable property of the defendants; (b) arrest of the defendant and his detention in prison; (c) appointing a receiver for the management of the moveable or Immovable properties of the defendant.

Section 26 bars the defendant to dispute before the recovery officer about the correctness of the amount specified in the certificate and no such objection to the certificate on any other ground shall be entertained by the recovery officer. Section 26(2) of the said Act of 1993 confers power on the Presiding Officer to withdraw a certificate or Correct any clerical or arithmetical mistake in the certificate by sending an intimation to the recovery officer. Section 27 confers power on the Presiding Officer to grant time for the payment of the amount and

if such time is granted to pay amount mentioned in the certificate, the recovery officer shall stay the proceedings until the expiry of the time was granted.

9. Section 28 also prescribes other modes of recovery. Proviso to S. 28(2) however, says, that nothing in sub-sec. (2) of S. 28 shall apply any part of the amount exempted from attachment in execution of a decree of civil court under Sec. 60 of the Code of Civil Procedure. Chapter VI of the said Act of 1993 deals with miscellaneous matters. Section 31 deals with transfer of pending case. Section 31 says that every suits or other proceedings pending before any court immediately before the date of establishment of a Tribunal under this Act being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal. Proviso to S. 31 however, says nothing in this said section shall apply to any appeal pending as aforesaid before any court. Sub-sec. (b) of S. 31(2) of the said Act of 1993 directs the Tribunal to deal with such suit or other proceedings in the same manner as in the case of an application made under S. 19 from the stage which was reached before such transfer or from any earlier stage or *denovo* as the Tribunal may deem fit. Section 34 of the said Act of 1993 provides the overriding effect on the said Act of 1993 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. Section 36 of the said Act of 1993 confers powers on the Central Government to make rules.

10. It would be seen from the scheme of the Act as discussed hereinabove, that on its coming into force on the appointed day, suits pending in civil courts would stand transferred to the Bank Recovery Tribunal if the cause of action of the suit would have fallen within the jurisdiction of the Tribunal after the appointed day. Therefore, from the appointed day a civil suit which was filed in the civil court where the provisions of the CPC would have applied, would stand transferred to the Bank Recovery Tribunal and the Bank Recovery Tribunal would be required to dispose of it as such. That is because S. 17 specifically provides that the Bank Recovery Tribunal shall exercise on or from the appointed day all such jurisdiction, power and authorities as were exercisable immediately before that date by any civil court in respect of recovery of debts due to banks and financial institutions. Section 19 bars jurisdiction of the civil Court to entertain and try such suits on and from appointed day. In other words after the appointed day the Bank Recovery Tribunal alone would have jurisdiction to entertain and try claims in respect of the matters referred to in S. 17 of the Act. Section 19 then sets out the procedures to be followed by the Bank Recovery Tribunal. Sub-section (1) of S. 22 states that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and shall have powers to regulate their own procedure including places at which they shall have their sittings. From a plain reading of sub-sec. (1) of S. 22 it is clearly evident that Bank Recovery Tribunal shall not be bound by the procedure laid down by the Court, but if we read sub-sections (1), (2) and (3) of

S. 22 of the said Act of 1993 conjointly, it must be held without hesitation in mind that the procedure as enumerated in S. 22 of the said Act of 1993 has not taken away the power of the Tribunal to invoke the procedure laid down by the courts if the ends of justice so require. Apart from that from any of the provisions of the Act and/or rules it does not appear that the CPC has been expressly excluded. It only says that the Tribunal shall not be bound by the procedure laid down by the CPC and shall have powers to regulate their own procedure including places at which they shall have their sittings. In a similar situation under the Railway Claims Tribunal Act, 1987 which also provides the same provisions as made in the Act, the Supreme Court in the case of A.A. Haja Muniuddian Vs. Indian Railways, has observed in paragraph 5 which are as follows :

"In other words after the appointed day the Claims Tribunal alone would have jurisdiction to entertain and try claims referred to in clauses (a) and (b) of sub-sec. (1) of S. 13 of the Act. Section 18 then sets out the procedure to be followed by the Claims Tribunal. Sub-section (1) of S. 18 states that the Claims Tribunal shall not be bound by the procedure laid down by the Code but shall be guided by the principles of natural justice and shall have powers to regulate its own procedure. It is true that sub-sec. (1) of S. 18 in term states that the Claims Tribunal shall not be bound by the procedure laid down by the Code but that does not mean that it is precluded from invoking the procedure laid down by the Code even if the ends of justice so require. The sub-section further states that the Tribunal shall have powers to regulate its own procedure and sub-sec. (3) of S. 18 enumerates the matters in respect whereof the Claims Tribunal is permitted to exercise the same powers vested in a civil Court under the Code while trying a suit. Rule 44 in terms states that nothing in the Rules shall be deemed to limit or otherwise effect the inherent power of the Tribunal to make such orders as may be necessary for the ends of justice. Nowhere in the Act is there any provision which runs counter to or is inconsistent with the provisions of O. 33 of the Code. Although the Act and the Rules do not specifically provide for the application of O.33 of the Code, there is nothing in the Act or the Rules which precludes the Tribunal from following that procedure if the ends of justice so require."

11. From the aforesaid observations of the Supreme Court in the case of A.A. Haja Muniuddian Vs. Indian Railways, , it can be safely held that the Bank Tribunal under the Act which also provides similar provisions as that of the Railway Claims Tribunal Act, 1987 is not precluded from following the procedure under the CPC if the ends of justice so require. In view of the aforesaid discussions and in view of the decision of the Supreme Court it is not necessary for me to deal with the other decisions cited by Mr. Roychoudhury on the question whether the Bank Tribunal under the Act cannot be said to have any jurisdiction to try a preliminary issue of law in terms of O. 14, R. 2 of the Code before other issues are decided. In all these cases the impugned orders passed by the Presiding Officer of the Tribunal are to the effect that the jurisdiction point

shall be decided along with the other issues. Therefore, it is an admitted position now that the jurisdiction point raised by the petitioners have not gone against them. But a direction has been made to consider such jurisdiction point at the time of final disposal of the petition under S. 19 of the Act. I have already discussed the statement of objects and reasons and also different provisions of the Act from which it is pellucid that the legislature has constituted the Tribunal under the Act to expedite disposal of recovery of debts case filed by the banks and financial institutions in order to release blocking of huge amounts of public money in litigation and to utilise such amount of public money properly and to recycle the funds for the development of the country. Let me now deal with O.14, R. 2 of the Code which provides for disposal of a preliminary issue of law relating to jurisdiction before deciding the other issues raised in the pending proceeding. From a discussion made earlier, I have already held that S. 22 of the Act have not taken away the power of the Bank Tribunal to invoke the procedure laid down by the Courts if the ends of justice so require. Ordinarily therefore, it is difficult to hold that O.14, R. 2 of the CPC cannot be applied by the Tribunal but on consideration of the statement of objects and reasons and the scheme of the Act of 1993 and the different provisions of the same as dealt with hereinabove I am unable to hold that the question of deciding a preliminary issue of law in accordance with the provision as contained in O.14, R. 2 of the CPC in separation of other issues cannot arise at all so far as the Tribunal is concerned. From the statement of objects and reasons, the preamble and in different provisions and the scheme of the Act of 1993 it is clearly evident that the legislature has intended disposal of pending petition under S. 19 of the Act as early as possible and to achieve such purpose it is not desirable for the Bank Tribunal to first decide a preliminary issue of law relating to jurisdiction and then to decide the other issues. It is difficult to understand how the loanees shall be prejudiced if the entire proceeding is disposed of within the time framed in S. 19(8) of the Act excepting that they have to adduce evidence in support of their defence. On the other hand if the jurisdiction point of law is taken up first and is decided against either of the parties and an appeal is taken against such order before the Appellate Tribunal, it is well known that the pendency of an appeal against the order passed by the Bank Tribunal would involve considerable period of time and after the appeal is disposed of and if the order of the Tribunal is set aside the matter must be sent back to the Bank Tribunal for disposal on the merits of the case and thus considerable time shall be consumed for a decision in the matter which shall defeat the very purpose of the said Act of 1993 for which the same has been enacted whereas if the jurisdiction point is taken up along with the other issues the decision can be made as expeditiously as possible and if any party is aggrieved on the question of jurisdiction it may also prefer an appeal against such final order and in appeal he can also agitate that the order of Tribunal regarding jurisdiction point was bad and illegal. The Appellate Tribunal may on hearing both sides come to a conclusion that the Tribunal had no jurisdiction to try the said case filed by the Bank under S. 19 of the Act. Only thing that would be involved in that case is that the loanee or the Bank had to

adduce evidence in support of the merits of the case. In my view, considering the scheme and object and reasons and the different provisions of the Act as discussed hereinabove there is no discretion on the Tribunal to decide the preliminary issue of law in accordance with O. 14, R. 2 of the CPC without deciding the other issue.

12. In view of S. 22 of the Act it is open to the Tribunal for exercising powers to regulate its own procedure. Looking back to the object for which the said Act has been enacted it clearly appears that the Act has been enacted for expeditious adjudication and recovery of debts due to the banks and financial institutions and for matters, connected therewith and incidental thereto. Section 19, sub-section (8) says that the Tribunal shall deal with the application filed under S. 19 of the said Act of 1993 as expeditiously as possible, an endeavour must be made by it to dispose of the application under S. 19 of the said Act of 1993 finally within six months from the date of filing the application, can it not be said that in order to dispose of the application within the time specified under S. 19 of the said Act of 1993, the Tribunal is not entitled to decide an issue of jurisdiction as preliminary issue of law before deciding the other issues. Assuming that the Tribunal does possess such discretion to take up the jurisdiction point as a preliminary issue of law and decides against the bank holding that the Tribunal has no jurisdiction to decide the disputes raised in the proceeding under S. 19 of the said Act of 1993, and an appeal is preferred against such an order and finally such issue of law which was decided as a preliminary issue of law and that had gone against the bank or the financial institution is decided in favour of the bank by the Appellate Tribunal after a considerable period of time only course that would be open to the Appellate Tribunal is to remit the matter back to the Tribunal for decision on merits in accordance with law. As noted earlier, the whole purpose to enact the Act of 1993 and to constitute the Bank Tribunal is to expedite adjudication relating to recovery of debts by the banks from the loanee within the time bound date as mentioned in S. 19(8) of the said Act of 1993 and therefore, in view of the time that would be spent before the Appellate Tribunal on the decision of the jurisdiction point, the purpose for which the Act has been introduced shall be totally frustrated which was, in my view, not the intention of the legislature. If in an appeal as mentioned above a preliminary issue of law relating to jurisdiction point goes in favour of the bank the matter cannot be disposed of with the object and the scheme of the said Act of 1993 for which the Act has been enacted as some length of time would be spent by the Appellate Tribunal to decide such issue and then the matter must be remitted back to the Tribunal for disposal on merits. As noted hereinabove, the main purpose to introduce the sa'id Act of 1993 is to take away the rights of the civil Courts to decide such types of suits as it involved considerable period of time and for which unnecessarily the bank was unable to recover the debts that was taken as a loan from the bank by the loanee. If the preliminary issue is allowed to be taken at the initial stage the time that would be consumed would be much more than the time taken for disposal of the application under S. 19 of the Act finally. Therefore, in view of the

discussions made hereinabove, I am of the view that O.14, R. 2 of the CPC is not applicable to a case filed under the said Act of 1993. Therefore, in my view, there is no reason to hold that the Tribunal having refused to exercise its jurisdiction to decide the preliminary issue of jurisdiction in separation of other issues has acted illegally and with material irregularity in the exercise of its jurisdiction. There is yet another aspect of the matter. Assuming for argument's sake the provisions of O.14, R. 2 of the Code can be applied by Tribunal even then the exercise of such power is, in my view, a discretionary one. For the purpose of holding that O.14, R. 2 of the CPC as it now stands can be applied in an appropriate case by the Court in its discretion, it is necessary to consider the O.14, R. 2 of the CPC before its amendment. It reads as follows:--

"Where issues both of law and fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed thinks fit, postpone the settlement of the issue of fact until after the issues of law have been determined."

13. Before the amendment of O. 14, R. 2 of the CPC it was a well settled rule that in appealable cases all issues arising in the suit ought to be ordinarily tried and decided. The reason for the introduction of this rule is to avoid piecemeal trial, protracted litigation and remand of the cases where the Appellate Court sets aside the decision of the trial Court on the preliminary issue upon which the trial Court has disposed of the suit. Rule 2 of O.14 of the CPC before its amendment was an exception to the normal principle of trial. If the Court was of the opinion that the case or any part thereof could be disposed of on issue of law only, it was mandatory on the part of the Court to try such issue as preliminary issue and dispose of the suit or any part thereof as the case might be on such preliminary issue. From the unamended provision of R. 2 of the O.14 of the Code it is, therefore, evident that when the Court was of the opinion that the case or any part thereof could be disposed of on the issue of law only, in that case the Court had no jurisdiction to take up all the issues for trial together with the issue of law. In that case it was mandatory on the part of the Court to take up issues of law only and decide the suit on such question of law by postponing the settlement of issues of facts until after the issues of law had been determined. In that case the issue of law would be made to be a preliminary issue. In the event the Court decides to take up such preliminary issue then it need not say that the preliminary issue would be decided at the time when the suit was tried. The word "shall" used in the unamended R. 2 of O. 14 of the Code, in my view, has a special significance. In the unamended provision, in my view, when a preliminary issue is framed the Courts have no other option but to decide the preliminary issue first and to postpone settlement of the issues of facts until after the issue of law had been determined. Therefore, in the unamended rule of O. 14, R. 2 of the Code of Civil Procedure, in my view, there was no question of talking up all the issues together if the preliminary issue is framed by the Court. However, O.14, R. 2 for the recent amendment has significantly changed the position. Order 14, Rule 2 of the CPC as now amended is as follows:--

2.(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it think fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

14. From a bare look to the amended provision of R. 2 of O. 14 of the CPC it is evident that the amended rule is divided into sub-rules (1) and (2). Sub-rule (1) of Rule 2 of Order 14, of the CPC has recognised the unamended rule that all the issues arising in the suit must be ordinarily tried notwithstanding that the case can be disposed of on a preliminary issue. Sub-rule (2) of Rule 2 of Order XIV of the CPC provides a limited exception to the ordinary rule of trial. In sub-rule (2) of Rule 2 of Order 14 of the CPC the incorporation of the word "may", in my view, has again some special significance. It is my firm opinion that by the incorporation of the word "may" instead of "shall" as was previously in the Order 14, Rule 2 of the CPC before its amendment the intention of the legislature was to make this sub-rule as discretionary and not mandatory. Therefore, under sub-rule (2) of Rule 2 of Order 14 of the Code even where both issues of law and fact arise in the same suit and if the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only it may try that issue first. A comparative reading of the aforesaid provision as it existed prior to the amendment and after the amendment would clearly indicate that the consideration of a preliminary issue and its disposal has now been made permissible only in limited cases. In the unamended Order 14, Rule 2 of the Code, the categorisation was only between issues of law and of fact and it was mandatory for the Court to try the issue of law at the first instance and to postpone the settlement of the issues of fact until after the issues of law had been determined. On the other hand, in the amended provision it is mandatory on the part of the Court to pronounce judgment on all the issues notwithstanding that the case may be disposed of on a preliminary issue. The only exception to this is contained in sub-rule (2). Sub-rule (2) relaxes the mandate to a limited extent by conferring discretion upon the Court if it-is of the opinion that the case or any part thereof can be disposed on the issues of law only it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must be related to the jurisdiction of the Court or to a bar to the suit created by a law in force. In the 14th edition of Mulla's CPC at page 1206 the Author observed that the amended rule made a departure from the rule as it stood before the amendment in three respects:

(i) that though a case may be capable of being disposed of on a preliminary issue, the Court is given a mandate to try all the issues.

(ii) that exception is made to this mandate by giving discretion to try an issue as to jurisdiction or a statutory bar to the suit as a preliminary issue and for that purpose post pone the settlement of the rest of the issues and

(iii) that in a given case the Court may decline to try even an issue relating to its jurisdiction or to a statutory bar to the suit as a preliminary issue if it considers expedient to do so.

15. From the discussions made herein-above and considering the aforesaid observations made by the Author in Mulla's CPC 14th Edition, it is therefore, evident that the amended Order 14, Rule 2 of the CPC confers limited discretion to decide a preliminary issue of law first before deciding the other issues. From the language of Order 14, Rule 2 of the CPC and from the discussion made hereinabove, I am, therefore, of the opinion that even if the Tribunal can be said to Have a discretion to decide a preliminary issue of law in separation of other issues raised in the proceeding but in view of the object and the scheme of the Act it has been rightly held by the Tribunal that there is no question to use such discretion and accordingly it has been rightly decided that the issue regarding jurisdiction shall be decided along with the other issues raised in the proceeding Therefore, I am unable to agree with Mr. Roychoudhury that since the jurisdiction point raised an issue of law which can be decided under Order 14, Rule 2 of the CPC such issue must be decided by the Tribunal before taking up other issues of law and fact. Before parting with this question, it is my duty to consider a single Bench decision of this court in the case of Jitendra Kr. Khan v. The Presiding Officer, Debts Recovery Tribunal, West Bengal (1996) 1 Cal LJ 179. In paragraph 6 at page 181 of the aforesaid single Bench decision, the learned single Judge has recorded the concession made by the learned lawyer for the opposite parties. It is as follows:--

"Mr. Sen, in his usual fairness does not dispute that proposition of law as putforth by Mr. Mukherjee but submits that he is doing so far accelerating the proceeding itself so that the proceeding can see finality at an earlier date."

16. In view of such concession as noted in the said judgment it would not be fair on my part to rely on the aforesaid decision for the purpose of deciding the question in hand. It is well settled law that ordinarily a single Judge either he sits in the original side or in the appellate side of this Court is ordinarily bound to consider with respect to the decision of another Judge either sitting in the original side or in the appellate side produced before him but if he is convinced that the decision is based on concession or erroneous, he is not under any obligation to follow it against his own judgment. Reference can be made in this connection in the case of AIR 1921 Cal 169 .

17. For the reasons aforesaid, I am unable to interfere with the orders impugned in these applications under Article 227 of the Constitution, as in my view, the

Tribunal was fully justified in holding that the jurisdiction point shall be decided along with the other issues raised in the proceeding.

18. Accordingly, these applications under Art. 227 of the Constitution are rejected.

19. There will be no order as to costs.

20. Order accordingly.