

(2016) 02 GUJ CK 0036
In the Gujarat High Court

Case No : Special Civil Application Nos. 13529 of 2015 With 14480 of 2015

Mukesh Bhavarlal Bhandari and other APPELLANT

Vs

UCO Bank and Another RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19,
20, 21, 34

Citation : (2016) 3 BankJ 242 : (2017) 1 BC 88 : (2017) 1 DCR 229 : (2016) 2 DRTC 272 : (2016) 2 GLR 1576

Hon'ble Judges : Anant S. Dave and G.B. Shah, JJ.

Bench : Division Bench

Advocate : Mr. Mihir Thakore Senior Advocate with Mr. Navin Pahwa for Thakkar And Pahwa, Advocates, for the Appellant; r. Pranav G. Desai, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anant S. Dave, J.(Oral) - The petitioners, in both these petitions being guarantors of respondent No. 2 company and defaulters to the tune of more than Rs. 75 crores, have filed these petitions and as common question of law about exercise of powers under Article 226 of the Constitution of India vis-a-vis availability of alternative remedy under the statute arise for consideration, with consent of learned counsel for the parties, both the petitions are taken up for hearing.

2. In Special Civil Application No. 13529 of 2015, the petitioners/original defendant Nos. 2 and 3 are the directors of respondent No. 2 ? original defendant No. 1 ? M/s. Electrotherm [India] Ltd. and guarantors in the loan transaction entered into by the respondent No. 2 company with respondent No. 1 - Uco Bank on 04.09.2010 for short-term loan of Rs.50 Crores. The respondent No. 2 company through its authorised director, has signed and executed security documents viz. demand promissory note, letter of waiver, agreement relating to

term loan, guarantee agreement executed by the petitioners/original defendant Nos. 2 and 3 and undertaking.

3. That Special Civil Application No. 14480 of 2015 is preferred by the petitioners with a prayer to quash and set aside order dated 06.07.2015 passed by the DRT-I, Ahmedabad in Original Application No.192 of 2011, which was filed by Syndicate Bank, respondent No.1. The facts of Special Civil Application No. 14480 of 2015 being similar to that of earlier Special Civil Application No. 13529 of 2015, except the amount of total claim of Rs. 25,51,45,359-34, in this case also, cheque of Rs. 25 crores given by the defendant No.1 i.e. M/s. Electro therm (India) Limited came to be returned unpaid for which defendant Nos. 2 and 3 i.e. petitioners herein stood as guarantors for short term loans. In this Original Application No. 192 of 2011, where judgment is delivered by the DRT on 06.07.2015 in which contentions raised by learned advocate on facts and law and findings, reasonings and conclusions of DRT are almost same to that of order dated 13.05.2015 passed in Original Application No. 125 of 2011 and, therefore, to avoid repetition, same are not reproduced in this order.

4. Even after completion of six months, the petitioners being guarantors and the principal borrower company failed to pay even principal amount and in spite of repeated requests and issuance of legal notice dated 10.08.2011 calling upon them to regularise the account, no heed was paid, and therefore, Original Application No. 125 of 2011 was preferred under provisions of Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [for short, "RDDB Act, 1993"] before the Debts Recovery Tribunal, Ahmedabad-I at Ahmedabad with a prayer to issue recovery certificate of Rs. 51,47,38,549-80. In written statement filed by defendant No. 1 and defendant Nos. 2 and 3, who are petitioners in writ petitions, denied to have signed and executed any security document in favour of the bank. Upon consideration of facts as well as law and specific plea raised by learned counsel appearing for the petitioners/defendant Nos. 2 and 3 that in view of proceedings pending before AAIFR with regard to subject dispute and that by virtue of operation of Section 22 of The Sick Industries Companies [Special Provisions] Act, 1985 [for short, "SICA, 1985], recovery against the guarantors viz. defendant Nos. 2 and 3 is prohibited and the Tribunal lacked jurisdiction to adjudicate original application. It was emphasised that in view of decision of the Apex Court in the case of K.S.L. Industries Limited v. Arihant Threads Limited & Ors. [AIR 2015 SC 498], SICA, 1985 has primacy over the RDDB Act, 1993 and particularly Section 22 shall prevail over the provisions of the RDDB Act, 1993.

4.1. However, the learned Presiding Officer, DRT-I, Ahmedabad allowed Original Application No. 125 of 2011 filed by the UCO Bank by determining the debt with costs against the defendant Nos. 2 and 3/petitioners herein, keeping the original application pending against the defendant company i.e. the borrower company during the pendency of reference before the BIFR or any appeal before AAIFR and the injunction order passed by the Tribunal dated 12.09.2011 on the

personal immovable properties of the defendant Nos. 2 and 3 was ordered to remain in force until the specific attachment order is passed by the Recovery Officer in the recovery proceedings qua such properties and certificate of recovery was to be drawn in accordance with law and to realise the amount from the defendants and compliance report to be submitted.

4.2. Thus, the Tribunal held that there is no bar to adjudicate the matter qua the defendants No. 2 and 3 i.e. guarantors and the Tribunal was duty bound to adjudicate the original application against the guarantors keeping the original application pending against the defendant No. 1 company, till the reference before BIFR or appeal, if any, pending before the AAIFR is disposed off. The Tribunal also held that in terms of Section 128 of the Indian Contract Act, the liability of the guarantors viz. defendant Nos. 2 and 3/original petitioners herein is coextensive with that of principal borrower.

5. Learned counsels Mr. Pranav Desai and Mr. Siddhartha Samal appearing for respondents, Uco Bank and Syndicate bank, respectively, raised a preliminary objection that in view of statutory and efficacious alternative remedy available to the petitioners under Section 20 of the RDDB Act, 1993, this court exercising powers under Article 226 of the Constitution of India would refrain from entertaining and proceeding further with these writ petitions and the writ petitions be heard and disposed of accordingly.

5.1. On the issue of availability of remedy to the petitioners, submissions are made elaborately by Mr. Pranav Desai and Mr. Siddhartha Samal, learned counsels appearing for the respective respondent banks to which reference will be made later on.

6. Mr. Mihir Thakore, learned Senior Advocate appearing with Mr. Navin Pahwa, learned counsel for the petitioners, strenuously urged that in view of lack of jurisdiction, DRT ought not to have entertained much less proceeded further with application filed by the respondent banks under Section 19 of the RDDB Act, 1993. It is submitted that there is a specific bar under Section 22(1) of the SICA, 1985 and when appeal is pending before AAIFR not only against the industrial company but also against the guarantors of the company, proceedings in the nature of suit ought not to have been initiated and when the order is passed by the DRT, which lacked jurisdiction, even statutory alternative remedy available to the petitioners would not come in the way of this court exercising powers under Article 226 of the Constitution. In a case where order is passed by a court, Tribunal or any legal forum, in absence or lack of jurisdiction, it is the bounden duty of this Court not only to exercise jurisdiction under Article 226 of the Constitution of India, but also to entertain the writ petition and to grant reliefs, as prayed therein and to take it to a logical end.

6.1. Learned Senior Advocate appearing for the petitioners relied on various provisions of Sections of SICA, 1985, more particularly, Section 22 about suspension of legal proceedings, contracts, etc. and Section 32 about Effect of

the Act on other laws, and various other provisions of RDDB Act, 1993 viz.

Section 2[a]

definition "Appellate Tribunal".

Section 17.

Jurisdiction, powers and authority of Tribunals.

Section 18.

Bar of jurisdiction.

Section 19.

Application to the Tribunal.

Section 20.

Appeal to the Appellate Tribunal.

Section 21.

Deposit of amount of debt due, on filing appeal.

Section 22.

Procedure and Powers of the Tribunal and the Appellate Tribunal.

Section 24.

Limitation.

Chapter V.

Recovery of Debt Determined by Tribunal.

Section. 34.

Act to have over-riding effect.

6.2. Learned Senior Advocate appearing for the petitioners relied on the following decisions of the Apex Court:

[1] In the case of Patheja Bros. Forgings & Stamping & Anr. v. ICICI Limited & Ors. [(2000)6 SCC 545], in the context of bar under Section 22 of SICA, 1985 for enforcement of any guarantee in respect of any loan or advance granted to the industrial company, the Apex Court held that such bar is applicable even to a suit filed against the guarantors. The contention that the bar would apply only when the company itself was the guarantor or was sued by a guarantor on subrogation, was rejected. The learned counsel emphasised that no suit for the enforcement of a guarantee in respect of any loan or advance granted to the industrial company concerned will lie or can be proceeded with, without the consent of the Board or the appellate authority [BIFR or AAIFR]. In the facts of

this case, nature of legal action taken by the bank against the petitioners for adjudication of debt and overall scheme of the RDDB Act, 1993 reveal that such action is not simpliciter recovery proceedings, but effective and meaningful adjudication of a dispute, and therefore, the Tribunal erred in assuming jurisdiction not vested in it.

[2] In the case of Kailash Nath Agarwal & Ors. v. Pradeshia Industrial & Investment Corporation of U.P. Ltd. & Anr. [(2003)4 SCC 305], the Apex Court was considering provisions of U.P. Public Moneys [Recovery of Dues] Act, 1972 vis-a-vis Section 22(1) and other provisions of SICA, 1985 in which Patheja Bros. Forgings & Stamping & Anr. [supra] came to be considered and it was noticed that there is an apparent distinction between the expression "proceedings" and "suit" used in Section 22(1) of SICA, 1985 and procedure undertaken under U.P. Public Moneys [Recovery of Dues] Act, 1972 was covered under the word "proceedings" in the first limb of Section 22(1) of SICA, 1985, it is not a "suit" for recovery and second limb of section Section 22(1) only prohibits recovery against industrial company, there is no protection afforded to guarantors against the recovery proceedings initiated under the U.P. Public Moneys [Recovery of Dues] Act, 1972. The above declaration of law interpreting Section 22(1) of SICA, 1985 vis-a-vis provisions of U.P. Public Moneys [Recovery of Dues] Act, 1972 according to Mr. Mihir Thakore, learned Senior Advocate, was in the backdrop of nature of U.P. Public Moneys [Recovery of Dues] Act, 1972, as proceedings of summary in nature ipso facto would not apply to recovery of debts and mechanism as provided under RDDB Act, 1993.

[3] In the case of Paramjeet Singh Patheja v. ICDS Ltd. [(2006) 13 SCC 322] was relied upon by Mr. Mihir Thakore wherein the Apex Court extended the bar contained in Section 22(1) of SICA, 1985 to proceedings initiated under Arbitration and Conciliation Act, 1996.

[4] In the case of Zenith Steel Tubes & Industries Ltd. [(2008)1 SCC 533], the Bench of two Judges of the Apex Court found the issue to be referred to a Larger Bench to resolve the anomaly resulting into different views emerging from two decisions in the case of Paramjeet Singh Patheja [supra], Patheja Steel Tubes & Industries Ltd. [supra] and Kailash Nath Agarwal [supra]. It is, therefore, submitted that since the case was resolved amicably, the above issue is not yet finally resolved by the Apex Court.

[5] In the case of KSL & Industries Limited v. Arihant Threads Limited & Ors. [(2008)9 SCC 763], the issue before the Apex Court was about two statutes employing non-obstante clause having over-riding effect viz. Sections 22 and 32 of SICA, 1985 vis-a-vis non-obstante clause in Section 34 [1] and [2] of RDDB Act, 1993, as the said act is later in point of time. However, in view of difference of opinions with regard to interpretation of Section 34 of RDDB Act, 1993 about over-riding effect, the matter was referred to Larger Bench, in which the controversy came to be finally resolved as per the decision in the case of KSL and Industries Limited v. Arihant Threads Limited & Ors. [(2015) 1 SCC 166] and

it was held that both SICA, 1985 and RDDB Act, 1993 are special laws with different purposes. Normally, later enactment with non-obstante clause prevail over former enactment, however, express enactment by Parliament in non-obstante clause in Section 34 of the RDDB Act, does not permit such course and Section 34(2) acts in nature of exception to overriding effect of RDDB Act and harmonious interpretation require that both the provisions may co-exist and it was held that provisions of SICA, 1985, more particularly Section 22, shall prevail over provisions for recovery of debts in RDDB Act, 1993. Relying on the aforesaid decision, it is submitted that though the protection to be afforded to guarantors under first limb of Section 22(1) never fell for consideration with regard to overriding effect of SICA, 1985, more particularly, Section 22(1) bars jurisdiction of any court, Tribunal or legal forum and applies even in a case of guarantors too and such bar extends and covers guarantors of industrial company. Thus, the question of law with regard to applicability of Section 22(1) of the SICA, 1985 vis-a-vis provisions of RDDB Act, 1993 viz. Sections 17(2), 19 and 20 need to be considered in light of preliminary objection raised by the learned counsel for the respondent ? banks of availability of alternative remedy under Section 20 for which this court will exercise jurisdiction under Article 226 of the Constitution of India. In this regard, reliance is placed in the case of Calcutta Discount Co. Ltd. v. Income-tax Officer, companies District I, Calcutta & Anr. [AIR 1961 SC 372] where the Income-tax Officer was acting without jurisdiction under Section 34 of the Income Tax Act and though remedy under Section 66(2) of Income Tax Act was available, party was not deprived of a quick relief by a writ in absence of any sufficient reason.

[6] In the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai [(1998)8 SCC 1], the High Court has dismissed writ petition on the ground that the petition under Article 226 of the Constitution of India was not maintainable and in such matters parties were required to pursue alternative remedy. The Apex Court considered power to issue prerogative writs under Article 226 of the Constitution of India and held that it is plenary in nature and not limited by any other provisions of Constitution and availability of effective and efficacious remedy, jurisdiction of High Court in writ petition would not be affected especially when the petition is preferred against authority, who had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. The challenge in the above case before the High Court was issuance of suo motu notice to the appellant under Section 56(4) of Trade and Merchandise Marks Act, 1958 for cancellation of certificate of registration.

6.3. Lastly it is submitted that in Appeal No. 94 of 2015 before AAIFR, New Delhi, it is referred in the order dated 06.01.2016 that Rs. 16.69 [approx.] crores will continue to remain appropriated subject to final order of BIFR and Rs. 11.27 [approx.] crores, which has been withheld and not yet appropriated will be kept separately in an "interest bearing no lien account" by the appellant and Rs. 2 crores and odd was recovered by the respondent banks.

7. Mr. Pranav Desai and Mr. Siddhartha Samal appearing for respondents, UCO Bank and Syndicate bank, respectively, in support of their contention of availability of statutory and efficacious remedy, relied on provisions of Section 17 pertaining to jurisdiction, powers and authority of Tribunals, including of the appellate authority under Section 17 of the Act and power of the Tribunal to entertain application for recovery of dues under Section 19 and availability of remedy of appeal to the appellate tribunal under Section 20 and deposit of amount of debt due on filing of appeal under Section 21 with proviso conferring discretion upon the appellate Tribunal for reasons to be recorded in writing, either to waive or reduce the amount to be deposited under the Section. The following decisions are relied on by Mr. Pranav Desai and Mr. Siddhartha Samal, learned counsels for the respective banks:

[1] Punjab National Bank v. O.C. Krishnan & Ors. [(2001)6 SCC 569].

[2] Rajkumar Shivhare v. Assistant Director, Directorate of Enforcement and Anr. [(2010)4 SCC 772].

[3] United Bank of India v. Satyawati Tondon & Ors. [(2010)8 SCC 110].

7.1. In addition to above, Mr. Pranav Desai and Mr. Siddhartha Samal, learned counsels for the respondent ?bank, have referred to the order dated 24.08.2015 passed by this Court in Special Civil Application No. 13529 of 2015 at the stage of issuance of notice and granting stay against the impugned order, of the DRT, on condition that petitioner shall not hereafter transfer, lease or alienate or create any charge in all their immovable properties or any of the properties in which they may have interest, including of the properties by way of security to secured debt in question. In this regard, it is submitted that the above conditional stay in the facts of this case will be illusory inasmuch as the petitioners have no immovable or any other properties or assets by which interest of the respondent banks is safeguarded. It is impossible to realise the outstanding dues of the respondent banks even by sale of such properties. Inter alia, learned counsels for the respondent banks have referred to certain past incidents in the proceedings before the learned Company Judge, observations and pending cases, including the proceedings under Money Laundering Act against the petitioners and huge outstanding dues to the banks and financial institutions and it is submitted that in view of preliminary objection about availability of statutory alternative remedy, this court will relegate the petitioners to approach the appellate authority under Section 20 of the RDDB Act.

8. Having given our thoughtful consideration to the arguments canvassed by the learned counsels for the parties, perusal of record of the case, including the impugned judgment of DRT, Ahmedabad and case laws relied on by learned counsels for respective parties in support of their arguments, it is profitable to reproduce certain relevant provisions of RDDB Act, 1993 for the sake of convenience and considering the preliminary objection with regard to availability of statutory, alternative and efficacious remedy vis-a-vis exercise of jurisdiction

under Article 226 of the Constitution of India.

"2[a] "Appellate Tribunal" means an Appellate Tribunal established under subsection (1) of Section 8;

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.

(2) 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.

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 Articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 [39 of 2002] shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.

Chapter IV

Procedure of Tribunals

19. Application to the Tribunal Sub-sections [1] to [25] of Section 19 prescribe detailed procedure of filing application before the Tribunal, on receipt of such application to issue summons to the defendant to show cause, hearing to continue preferably from day today and number of adjournments to be granted, written statement to be filed, to avoid delay in disposal of such application to appoint a receiver of any property, in a given case and to issue certificate of recovery, etc.

20. Appeal to the Appellate Tribunal

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

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

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been

made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed: PROVIDED that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty five days if it is satisfied that there was sufficient cause for not filing it, within that period.

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

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

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

21. Deposit of amount of debt due, on filing appeal

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

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

22. Procedure and powers of the Tribunal and the Appellate Tribunal

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely,-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

24. Limitation

The provisions of the Limitation Act, 1963, (36 of 1963) shall, as far as may be, apply to an application made to a Tribunal.

34. Act to have overriding effect

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

(2) The provisions of this Act or the rules made thereunder shall be in addition to and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), and the Sick Industrial Companies (Special Provisions) Act, 1985 [1 of 1986] and the Small Industries Development Bank of India Act, 1989 [39 of 1989].

8.1. Thus, RDDB Act, 1993, amended from time to time, is enacted by the Parliament and statement and objects and reasons read as under:

"Statement of Objects and Reasons

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. Narasimham has considered the setting up of 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 bank 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 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, along-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on 30th September, 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. 5622 crores in dues of Public Sector Banks and about Rs. 391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country.

The Bill seeks to provide for the establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. Notes on clauses explain in detail the provisions of the Bill".

Thus, RDDB Act, 1993 is an act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and other matters connected therewith or incidental thereto.

8.2. Chapter-III under the head of Jurisdiction, Power and Authority of Tribunals define jurisdiction, powers and authority of Tribunals to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions and Appellate Tribunal is to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act. An elaborate procedure is prescribed under Section 19 of the Act empowering the Tribunals to consider, deliberate and decide the issues involved therein and Section 20 is provision to appeal to the Appellate Tribunal where any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to Appellate Tribunal having jurisdiction in the matter. No doubt, time limit is prescribed for such an appeal, under Sub-section (3) of Section 20, which is for 45 days from the date on which a copy of the order is received by an aggrieved person and proviso thereto empowers the appellate Tribunal to condone the delay in case if the appeal is preferred after the expiry of the period of 45 days provided sufficient cause is shown by the aggrieved person for not filing it within that period. Under sub-section (4) Section 20, the appellate Tribunal is empowered to confirm, modify or setting aside the order appealed against after affording an opportunity of hearing to the parties and such appeal is to be disposed of preferably within 6 months from the date of receipt of appeal.

8.3. That Section 21 provides depositing 75% of the amount of due by an aggrieved person, as determined by the Tribunal under Section 19, but proviso

thereto empowers and confers discretion upon the appellate Tribunal for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Section. It is pertinent to note that the validity of the above Section was challenged and that condition being onerous and not capable of complying with and takes away right of an aggrieved person to prefer appeal, is negated by the Apex Court in various decisions and one of such decisions is in the case of *Mardia Chemicals Ltd. v. Union of India* [(2004) 4 SCC 311]. The above inbuilt mechanism provided by the RDDB Act, 1993 confers power upon the Appellate Tribunal to consider the appeal on any ground and for any error, either lack of jurisdiction or law or on fact committed by the concerned Tribunal. The contentions raised by Mr. Mihir Thakore, learned Senior Counsel appearing for the petitioners about lack of jurisdiction by DRT-I, Ahmedabad in entertaining proceedings and deciding the application under Section 19 of the Act in view of specific bar contained under Section 22 of SICA, 1985, can very well be gone into by the Appellate forum in exercise of powers under Section 20 as well as Section 21 of the RDDB Act, 1993. The statutory alternative, efficacious remedy, if seen in the context of Objects and Reasons and the Scheme of the RDDB Act, 1993, nothing is found prohibitive or restrictive for the appellate Tribunal to consider the ground of lack jurisdiction or absence of jurisdiction with DRT, Ahmedabad and also appeal can be heard on other issues on merit. We are in complete agreement with the decisions cited at Bar by the learned counsels for the respondent banks in the case of *Rajkumar Shivhare* [supra] and *United Bank of India* [supra] in the context of efforts made by banks/financial institution for recovery of their dues under debt, financial and monetary laws, more particularly, in the case of *United Bank of India* [supra], the Apex Court has observed in paras 43, 44 and 45 as under:

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement

of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance".

[emphasis supplied]

8.4. In the above judgment, some of the decisions relied on by the learned counsel for the petitioners were considered and relying on the decision of the Constitution Bench of the Apex Court in the case of *Thansingh Nathmal v. Suptd. Of Taxes* [AIR 1964 SC 1491] whereby the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article 226 of the Constitution of India questioning the order passed by the Commissioner of Taxes under Assam Sales Tax Act, 1947, the Apex Court in para 7 observed as under:

"7. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

[emphasis supplied]

In the above judgment, the Apex Court has relied upon the decision in the case of *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [1983(2) SCC 433 and the view expressed in the case of *Titaghur Paper Mills Co. Ltd.* [supra] were echoed in the case of *CCE v. Dunlop India Ltd.* [(1985) 1 SCC 260] observing that Article 226 is not meant to short-cut or circumvent statutory procedures and it is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution of India. So is not the case in the case noticed by us where the petitioners have defrauded the respondent banks to the tune of Rs.50 crores and Rs. 25 crores, respectively, exclusive of interest and penalty, etc.

9. We are not impressed with the arguments canvassed by learned Senior Counsel for the petitioners that powers under Article 226 of the Constitution of India be exercised as there is bar under Section 22 of the SICA, 1985 and the Tribunal has no jurisdiction or the Tribunal lacks jurisdiction to entertain application filed under Section 19 of the RDDB Act, 1993, for the reason that the very issue and the grounds can be raised before the appellate Tribunal, which has jurisdiction, power and discretion to entertain and consider such grounds on merit. Therefore, the decisions relied on by Mr. Mihir Thakore, learned Senior Advocate in the cases of *Calcutta Discount Co. Ltd.* [supra] and *Whirlpool Corporation* [supra] in support of the above contention, have no application to the facts of the present case. We are not entering into any other contentions as we are disposing of both these writ petitions on the preliminary issues raised by learned counsel for the respondent banks and both the writ petitions are disposed of accordingly.

10. Notice issued in each of the petitions stands discharged.

11. After the above order is passed, Mr. Navin Pahwa, learned advocate for the petitioners requested to continue the conditional stay granted vide orders dated 24.08.2015 passed in Special Civil Application No. 13529 of 2015 and 08.09.2015 in Special Civil Application No. 14480 of 2015, so as to approach the Apex Court/the appellate Tribunal, as the case may be, to which, Mr. Pranav Desai and Mr. Siddhartha Samal, learned counsels appearing for the respondent ? banks raised objection. However, considering the facts and circumstances of the cases, we would like to continue the above orders till further period of three weeks from today.