

(2000) 08 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4528 of 1999 and Batch

Prudential Capital Markets Ltd., Calcutta

APPELLANT

Vs

State of A.P. and others

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Arbitration Act, 1940 — Section 34
Civil Procedure Code, 1908 (CPC) — Section 9
CLB Regulations, 1991 — Regulation 21
Companies Act, 1956 — Section 10E, 58A
Constitution of India, 1950 — Article 226, 227
Consumer Protection Act, 1986 — Section 12, 2(1), 27(1), 3
Contract Act, 1872 — Section 9
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 193, 195, 196, 228
Reserve Bank of India Act, 1934 — Section 45Q, 45QA

Citation : (2000) 5 ALD 418 : (2000) 5 ALT 468 : (2002) 108 CompCas 441

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. Milind G. Gokhale, for the Appellant; M/s. J. Ugra Narasimha, G. Rama Gopal, N. Siva Reddy, Aravala Rama Rao, P.S. Sastry, G. Krishnan, G. Vijaya Kumar and Government Pleader for Civil Supplies, for the Respondent

Judgement

1. In this group of writ petitions, Prudential Capital Markets Limited (PCML), Calcutta is the petitioner. In all the petitions they prayed for a writ of prohibition, prohibiting the District Consumer Disputes Redressal Forum (hereafter called "the District Forum") or the State Consumer Disputes Redressal Commission (hereafter called the State Commission) from entertaining any complaint or petition from the respondent-depositor (hereafter called "the depositor") and further declare that it is only the Company Law Board (CLB) which can entertain a complaint against PCML.

2. There are three categories of cases. The first category of cases are those where the depositor filed a consumer dispute case before the competent District

Forum for refund of the deposit made by the depositor with the PCML and on the District Forum allowing the application, the petitioner herein approached the State Commission which dismissed the appeal filed and whereupon depositor approached District Forum u/s 27(1) of the Consumer Protection Act, 1986 (hereafter called "the Consumer Act") by filing penalty petition. The second category of cases are those where the depositor filed a penalty petition before the District Forum for implementation of the order in consumer dispute case and where the petitioner did not approach the State Commission which is the appellate Forum. The third category of cases are those where the orders of the appellate Forum are challenged by the petitioner. As the petitioner is the same and the questions of law that arise for consideration are same, it is convenient to dispose of all the writ petitions by a common order.

3. For the sake of convenience, the pleadings in Writ Petition No.7920 of 1999 may be noticed.

4. The petitioner is a Non-Banking Finance Company (NBFC) under the control of Reserve Bank of India (RBI). The business of the petitioner is governed by the provisions of the Reserve Bank of India Act, 1934 (hereafter called, the RBI Act). In 1997 the RBI Act was amended and Section 45-QA in Chapter IIIB was introduced which applies to all the NBFCs. Section 45-QA confers powers on CLB constituted u/s 10-E of the Companies Act, 1956 to order repayment of the deposit when NBFC fails to repay any deposit. In the case of any default committed by NBFC in repayment of the deposit in accordance with the terms and conditions of such deposit, the depositor shall have to approach the CLB only for redressal of grievance. The CLB is competent to order repayment of the deposit the failure of which attracts imprisonment for a term upto three years and fine of not less than Rs.50/-from the date of default till the amount is paid, under sub-section 4(AAA) of Section 58-B of the RBI Act. In view of Section 45-Q of the RBI Act, the provisions of Chapter IIIB have overriding effect and therefore the CLB alone has exclusive jurisdiction.

5. In 1997 due to C.R. Bhansali scam there was a panic in finance market resulting in a "run on NBFCs". All the investors wanted to withdraw their amounts. The petitioner faced problems to make payments to depositors at short notice, as funds were not available though they had sufficient assets to pay off all the amounts of the depositors. When the petitioner issued post-dated repayment/interest warrants to depositors they were returned by the bankers and the State Bank of India withdrew "at par" facility given to the petitioner. Consequent thereto, number of criminal cases were filed against the petitioner for dishonour of cheques/repayment warrants. In this background, several depositors filed applications before the CLB, Eastern Region Bench u/s 45-QA of the RBI Act. Taking into consideration large number of applications and after hearing all the concerned, the CLB passed a comprehensive order on 27-5-1998. This order covers all the depositors of the petitioner-Company whether they had approached the CLB or not. As per the repayment schedule determined by the

CLB all the depositors would be repaid within a period of 4 1/2 years from the date of maturity of the deposit.

6. It is further alleged that in spite of being informed by personal notices as well as through National dailies that CLB is seized of the matter, depositors filed complaints before Consumer Forums, Criminal Courts u/s 138 of the Negotiable Instruments Act, 1881, as well as other Courts of law. Though there are clear provisions in the RBI Act, the District Forums and State Commissions have been entertaining and adjudicating the complaints. As Section 3 of the Consumer Act is not in derogation of the existing laws and as Section 45-Q of the RBI Act contains non-obstinate clause, it would not be open to the parties to resort to the additional remedy before the Forums. Right to recover the deposits can only be enforced in accordance with Section 45-QA in Chapter III B of the RBI Act and the additional remedy under the Consumer Act will not be available to the depositors. Therefore, it is alleged that the action of the District Forum in entertaining CD No.800 of 1998 filed by the third respondent (depositor) suffers from inherent lack of jurisdiction and hence should be prevented from entertaining any complaint/petition for implementation of the order in CD No.800 of 1998.

7. The third respondent/depositor filed a counter-affidavit through her grandfather. Indeed, he is representing five depositors who filed CD No.800 of 1998 and he is the joint investor with the third respondent. The writ petition by PCML is opposed as not maintainable. The brief averments in the counter affidavit are as follows :

The third respondent along with the joint depositors deposited an amount of Rs.15,000/- on 21-1-1997 for a period of 12 months. The agreed rate of interest is 15% per annum. V. Rekha, D. Mahesh, D. Sarada and G. Anuradha also made deposits of Rs.15,000/-each. On 30-5-1997 the third respondent requested the PCML to repay the deposit foregoing interest. In spite of reminder on 30-6-1997 to pay with interest at 10% per annum on or before 4-7-1997 no action was taken for repayment. The Branch Office of the PCML at Hyderabad went on giving assurance of repayment. Lawyer of the third respondent sent a notice to the Head Office as well as Branch Office on 30-7-1997 demanding repayment in vain. The second and final notice was issued on 30-9-1997 requesting repayment within 30 days whereupon the PCML by their letter dated 17-11-1997 informed the Counsel for the third respondent that payment will be made on maturity. In the said letter PCML did not inform about the pending case in the CLB Eastern Region Bench. Acting on the assurance, the third respondent on 8-1-1998 sought for repayment. The interest warrant was sent on 2-2-1998, but the same was dishonoured. Therefore, the joint depositor, the deponent of the counter-affidavit, requested PCML to repay Rs.75,000/-towards five fixed deposit receipts along with interest by 20-1-1998. A reminder was also sent on 14-4-1998, which was acknowledged by PCML, but no action was taken. Therefore, all the five depositors filed consumer dispute case, being CD No.800 of 1998. Notices were

duly sent to the Branch Office as well as the Head Office, which acknowledged the same but did not appear before the District Forum, in spite of many opportunities. Therefore, the District Forum passed orders on 27-11-1998 ordering repayment to the five depositors at the rate of Rs.15,000/- with interest and costs. The copy of the order was sent to the PCML, which acknowledged the same, but did not repay. In March, 1999, the PCML addressed a letter to the lawyer of the third respondent enclosing a copy of the order of the CLB, dated 27-5-1998. Thereafter, the third respondent received notices from State Commission in FANo.41 of 1999 filed by PCML. On 22-4-1999 the State Commission dismissed FA No.41 of 1999. When the case was posted to 22-4-1999 by the State Commission, the petitioner approached this Court on 19-4-1999 and obtained ex parte order of stay of implementation of the order in CD No.800 of 1998.

8. It is also contended that the provisions of Chapter IIIB of the RBI Act or the Companies Act do not take away the jurisdiction of the District Forum and the State Commission. The RBI did not furnish any material before the CLB before passing any order. As per the provisions of Regulation 21 of CLB Regulations 1991, the CLB is required to issue notices to the depositors and all others connected with the matter. The depositors filed a complaint in July, 1999, before the RBI, which ordered PCML to stop collection of deposits and therefore the CLB ought to have called for necessary information from RBI in respect of the deposits. The CLB without proper verification and without issuing notice to the depositors calling for objections from them, passed orders on the applications made by negligible number of less than 200 depositors. The CLB unilaterally ordered a scheme of repayment. Though the PCML was directed by the CLB to send a copy of the order to the depositors, the same was not sent till March, 1999. Even then, the copy of the order of the CLB, dated 27-5-1998 was communicated after the depositor's Counsel issued a registered notice informing the filing of the penalty petition. The reply by PCML dated 17-11-1999 addressed to the depositor's Counsel shows that PCML has even flouted the orders of CLB. The petitioner-Company did not issue any notice to the depositor nor bring it to the notice of the District Forum even after filing of CD No.800 of 1998. Against the order of the District Forum, a first appeal is filed to the State Commission and in the Memo of grounds filed before the State Commission the PCML did not bring to the notice of the State Commission about the orders of CLB. The PCML is acting with malice and it is not sincere in repaying the deposit amounts to the depositors. The jurisdiction of the Forums created under the Consumer Act is not taken away by the provisions of other laws. The PCML has not approached the High Court with clean hands and they suppressed the relevant facts and obtained interim orders from this Court.

9. In all other cases the facts are similar. In some cases, for instance WP No.7916 of 1999, the depositor deposited amount in bonds of Rs.7,410/- each with maturity value of Rs. 10,000/-. It is contended that the order of the CLB does not cover the bonds issued by the PCML. It is the contention of the

depositor that as per the statement of objects and reasons of RBI (Amendment) Act, 1997 (Act No.23 of 1997) Section 45-QA only provides an additional remedy of approaching CLB and the recourse to other Courts of law and other Forums for redressal of grievance is not taken away by the RBI Act. The writ petitions of PCML are also opposed on the ground of availability of alternative remedy provided by the Consumer Act.

10. Learned Counsel for the petitioner in all these cases, Sri Milind G. Gokhale submits that the Consumer Act "is not applicable to PCML and other NBFCs, as Section 45-QA of Chapter IIIB of the RBI Act provides for a specific remedy to a depositor. Section 3 of the Consumer Act which is in addition to existing laws, does not override the provisions of 45-Q of the RBI Act. It is further submitted that Section 45-QA of the RBI Act provides a cheaper and faster remedy to the depositor as compared to the remedy under the Consumer Act, especially in view of the legal position that the CLB established u/s 10-E of the Companies Act has got sufficient and substantial powers to order penalty and also order imprisonment to the Directors of the defaulting company. At the instance of various depositors, the CLB, Eastern Region Bench, entertained the matter and passed a detailed order granting time to PCML to pay/refund the deposits over a period of about four years in instalments. When once the CLB passed an order covering all the depositors of PCML, Consumer Forum/Slate Commission cannot take cognizance of the consumer cases. The Forums constituted under the Consumer Act, therefore, suffer from inherent and apparent lack of jurisdiction and accordingly they should be prohibited by a writ from proceeding further with the original proceedings, appellate proceedings or execution proceedings.

11. On behalf of the depositors (respondents in the writ petitions) M/s. G. Krishnan, G. Ramgopal and Ashok Anand Kumar made leading submissions. The learned Counsel firstly submit that the petitioner/PC ML approached this Court by suppressing the facts and that they have effective alternative remedy by way of appeal to the State Commission or by way of revision petition to the National Commission and, therefore, the PCML is not entitled to approach this Court under Article 226 of the Constitution of India. Secondly, it is submitted that in view of the provisions of Section 3 of the Consumer Act, the Forum does not suffer from inherent and apparent lack of jurisdiction and therefore a Writ of Prohibition does not lie. In any event all the cases before various District Forums were finally disposed of, that the PCML carried the matter in some cases to State Commission by filing appeals and therefore when the proceedings before a Forum or a Court are finalised, the execution thereof cannot be stopped by Writ of Prohibition and the aggrieved party has to seek remedy by filing appeal against the order, which is sought to be executed by the depositors. Thirdly, it is submitted that CLB has not complied with the provisions of the law before passing orders and therefore the same is not binding on the depositors. In view of this, the order passed by the CLB has no effect on the proceedings before the various District Forums/ State Commission. It is also submitted that when the law provides for several remedies under common law - the Companies Act, the RBI Act and the

Consumer Act, it is open to the depositor to choose any remedy suitable and un-cumbersome to him unless the depositor is specifically debarred from doing so by explicit provision in the Consumer Act.

12. On the arguments addressed by the learned Counsel for the petitioner and by the learned Counsel for the depositors the following points arise for consideration.

(1) In the facts and circumstances of this case whether a Writ of Prohibition would lie against District Forum/State Commission, who already passed orders in the consumer cases filed by the depositors;

(2) Whether the petitioner/PCML should be denied any relief on the ground of suppression of facts and also on the ground of availability of alternative remedy; and

(3) To what relief?

In Re Point No.1:

13. The first point for consideration requires examination of the following :

(i) The scope of Writ of Prohibition;

(ii) Whether Sections 45-Q, 45-QA of the RBI Act read with Sections 58-A(9) of the Companies Act oust the jurisdiction of District Forum/State Commission to entertain an application by the depositor for refund of the deposit; and

(iii) What is the effect of the order dated 27-5-1998 passed by the CLB Eastern Region Bench in File No.CLB/ERB/ CAI715(PCML)97-98, on the proceedings before the District Forum/State Commission or in the proceedings u/s 27 of the Consumer Act.

"Writ of Prohibition may be defined as extraordinary judicial writ, issuing out of a Court of superior jurisdiction and directed to an inferior Court, for the purpose of preventing the inferior Tribunal from usurping a jurisdiction with which it is not legally vested. The object of writ is to restrain subordinate judicial Tribunals of every kind from exceeding their jurisdiction." [Janes L.High "A Treatise on Extraordinary Legal Remedies"; 3rd edition 1896; pp 705-706.] It does not lie for grievances which may be redressed, in the ordinary course of judicial proceedings, by appeal. It is not a writ of right, granted ex debito justitiae but rather one of sound judicial discretion, to be granted or withheld according to the circumstances of each particular case. This writ has to be used with great caution and forbearance for furtherance of justice and to secure order and regularity in judicial proceedings, when none of the ordinary remedies provided by law are applicable. [Ibid; p.709]

14. Writ of Prohibition cannot be granted except in a clear case of want of jurisdiction in the Court whose action is sought to be prohibited and to warrant issue of Writ of Prohibition the petitioner must clearly show that an inferior Court is about to proceed in a matter over which it has no jurisdiction. [Ibid; p.709.]

15. The Writ of Prohibition is preventive rather than corrective remedy, and it issues only to prevent the commission of a future act and not to undo an act already performed. When, therefore, the proceedings which it is sought to prohibit have already been disposed of by the Court, and nothing remains to be done either by the Court or by the parties, the cause having been absolutely dismissed by the inferior Tribunal, prohibition will not lie. [Ibid; p.710.] Like all other extraordinary remedies, prohibition is granted only in cases where the usual and ordinary forms of remedy are insufficient to afford redress. In view of this, the writ will not be allowed to take the place of an appeal, nor will it be granted as an exercise of purely appellate jurisdiction. In all cases, therefore, where the party aggrieved may have ample remedy by an appeal from the order or judgment of the inferior Court, prohibition will not lie, [Ibid; pp.716-717.] De Smith's Treatise points out law thus:

"Historically, the orders of certiorari and prohibition have had so many characteristics in common that they may be discussed together. The one significant difference between them is that prohibition may, and usually must, be invoked at an earlier stage than certiorari. Prohibition will not lie unless something remains to be done that a Court can prohibit. Certiorari will not lie unless something has been done that a Court can quash." [De Smith : "Judicial Review of Administrative Action"; 5th Edition 1995, Edited by Woolf and Jowell, P.702.]

16. The learned revising authors also stated that if want of jurisdiction is apparent, prohibition may be applied for at once and if want of jurisdiction not apparent the applicant must wait until the Tribunal has actually stepped outside its jurisdiction, but an applicant who has been guilty of delay may be refused the relief of prohibition.

17. Further, as already noticed, prohibition is a remedy strictly concerned with excess of jurisdiction though modern public law deal certiorari and prohibition together, HWR Wade and CF Forth : "Administrative Law" : 7th Edition 1994; p.625. In R v. North ex parte Oakey (1927) 1 KB 491, Lord Justice Atkin observed as under:

"I can see no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction."

18. Clive Lewis refers to R. v. Oakey (supra). Estate and Trust Agencies Ltd v. Singapore Improvement Trust (1937) AC 898 and R. v. Horseferry Road Justices, ex parte. Independent Broadcasting Authority (1987) QB 54 and comments as under:

"Prohibition may also be used to prevent the implementation of a decision which

is unlawful. Thus, the Courts have prohibited a statutory corporation from implementing an invalid decision to demolish a house and the execution of a Court order imposing a fine, which was vitiated by a breach of natural justice. Certiorari to quash (or now, a declaration of invalidity) may be coupled with an order of prohibition to prevent the implementation of that decision". [Clive Lewis : "Judicial Remedies in Public Law"; 1st edition 1992;p.161]

19. The learned Counsel for the respondent-depositors placed reliance on The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , Govinda Menon Vs. Union of India (UOI), , Isha Beevi on behalf of the Minor Umaiben Beevi and Others Vs. The Tax Recovery Officer and Addl. P.A. to Collector, Quilon and Others, , U.P. Sales Tax Services Association Vs. Taxation Bar Association, Agra and others, and submit that unless lack of jurisdiction is apparent and inherent a writ of prohibition cannot be issued. It is their submission that under the provisions of the Consumer Act, the District Forum as well as the State Commission have ample jurisdiction and power to entertain consumer disputes cases filed by the depositors and therefore they do not suffer from inherent and apparent lack of jurisdiction.

20. The principle of law canvassed by the learned Counsel for the depositors is well settled. Therefore, a reference to a few precedents would suffice.

21. In Hari Vishnu's case (supra), the distinction between Writ of Prohibition and Writ of Certiorari was noticed by a Constitution Bench of the Honourable Supreme Court as under:

"But there is one fundamental distinction between the two writs, and that is what is material for the present purpose. They are issued at different stages of the proceedings. When an inferior Court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior Court for a writ of prohibition, and on that, an order will issue forbidding the inferior Court from continuing the proceeding. On the other hand, if the Court hears that cause or matter and gives a decision the party aggrieved would have to move the superior Court for a writ of "certiorari", and on that, an order will be made quashing the decision on the ground of want of jurisdiction."

22. In Isha Beevi's case (supra), the Supreme Court ruled:

"...in order to substantiate a right to obtain a writ of prohibition from a High Court or from this Court, an applicant has to demonstrate total absence of jurisdiction to proceed on the part of the officer or authority complained against. It is not enough if a wrong section of provision of law is cited in a notice or order if the power to proceed is actually there under another provision."

22. In U.P. Sales Tax Service Association's case (supra), the Supreme Court indicated situations and circumstances under which a Writ of Prohibition can be issued. It is useful to extract the relevant Portion from paragraph 23 of the

judgment, which reads as under:

"The High Court has power to issue a writ of prohibition to prevent a Court or Tribunal from proceeding further when the inferior Court or Tribunal (a) proceeds to act without or in excess of jurisdiction, (b) proceeds to act in violation of the rules of natural justice, (c) proceeds to act under law which is itself ultra vires or unconstitutional, or (d) proceeds to act in contravention of the fundamental rights."

23. In view of the various precedents and the comments of textbook writers, it may be taken as well-settled that a Writ of Certiorari and a Writ of Prohibition have many characteristics in common. A Writ of Prohibition is issued at the earliest stage to prevent a lower Court/Tribunal from usurping the jurisdiction, which does not vest in it and where the lower Court/Tribunal inherently and apparently lacks jurisdiction. If a decision is already given by the inferior Court/Tribunal a Writ of Prohibition is not proper remedy and such decision without jurisdiction can only be quashed by a Writ of Certiorari. The execution or implementation of a decision by an inferior Court cannot ordinarily be aborted by a Writ of Prohibition. It is also well settled that issuance of a Writ of Prohibition, like other extraordinary remedies, is also subject to doctrine of alternative remedy, delay and laches and other rules of prudence governing issue of prerogative writs.

24. The next issue is whether the provisions of the RBI Act and the Companies Act oust the jurisdiction of District Forum/ State Commission to give redressal to a depositor who complains "deficiency in service" given by NBFC.

25. The learned Counsel for the depositors contend that the Consumer Act is a substantive law, conferring the right to seek redressal for violation of substantive right and therefore Sections 45-Q and 45-QA of the RBI Act or Section 58-A of the Companies Act being procedural laws cannot be interpreted as ousting the jurisdiction of the Forums. They also contend that "exclusion of jurisdiction" of the Forums cannot be readily inferred and having regard to the legislative history of the Consumer Act, the provisions should be interpreted so as to enlarge the jurisdiction instead of curtailing the jurisdiction of the District Forums/State Commission. The learned Counsel for the PCML relies on Sections 45-Q and 45-QA of the RBI Act and submits that in view of non-obstinate clause in Section 45-Q only the CLB constituted u/s 10-E of the Companies Act has power to direct a NBFC to make repayment of the deposit and that Consumer Forum has no jurisdiction to entertain the consumer case.

26. As rightly contended by the learned Counsel for the depositors, exclusion of jurisdiction of a Court or a Tribunal cannot be readily inferred. Exclusion of jurisdiction should be explicit. In a given case, the jurisdiction is also excluded by necessary implication if there are clear unambiguous indicia or determining parameters in the statute governing the establishment, duties, functions and powers of the Court or Tribunal. That exclusion of jurisdiction should be patent is

well-settled by a catena of decisions relied on by the learned Counsel for the petitioner. [See Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, , Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, and Dhulabhai and Others Vs. The State of Madhya Pradesh and Another,

27. In Ludhiana Municipality case (supra), the Supreme Court considered the question whether availability of the remedy under Punjab Municipal Act by way of appeal against orders passed by the Municipal authority excludes the jurisdiction of the civil Court to adjudicate a claim for refund of octroi improperly collected by the Municipality. His Lordship Koka Subba Rao (as His Lordship then was) speaking for a Division Bench of the Supreme Court laid down the law as under:

"..... A statute, therefore, expressly or by necessary implication, can bar the jurisdiction of civil Courts in respect of a particular matter. The mere conferment of special jurisdiction on a Tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil Courts. The statute may specifically provide for ousting the jurisdiction of civil Courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular Forum in which the remedy could be had. Even in such cases, the civil Court's jurisdiction is not completely ousted."

28. In Firm I.S. Chetty's case (supra), a Constitution Bench of the Supreme Court laid down as under:

"The exclusion of the jurisdiction to entertain civil causes will not be assumed unless relevant statute contains an express provision to that effect or lead to necessary and inevitable implication of such nature. The mere fact that a special statute provides for certain remedies may not by itself necessary exclude the jurisdiction of the civil Court to deal a case brought before it in respect of the matters covered by the statute."

29. In State of Andhra Pradesh v. Manjeti Laxmi Kantha Rao AIR 2000 SCW 2334, the Hon'ble Supreme Court, while referring to Dhulabhai case (supra), laid down a test to be adopted in examining the question whether jurisdiction of the civil Court is excluded, as under:

"The normal rule of law is that civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided u/s 9 of the CPC but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the Legislature intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it."

30. It is not denied that the Consumer Act does not specifically exclude the jurisdiction of the Forums to give redressal in the event of deficiency in service by a NBKC. It is also not denied that NBFC like PCML is amenable to the jurisdiction of the Forums under the Consumer Act in the event of deficiency in service. Therefore, it is to be examined whether the provisions of the RBI Act, the Companies Act and the Consumer Act by implication exclude the jurisdiction of the Forums in the facts and circumstances of this case. This requires examination in brief the scheme of the Consumer Act and the purport of the relevant provisions of the Companies Act and the RBI Act

31. The framework for the Consumer Act was provided by a Resolution, dated 9-4-1985 of the General Assembly of the United Nations Organisation. This is known as Consumer Protection Resolution No.39/248. Being a signatory to the said Resolution, India enacted the Consumer Act to provide inter alia for better protection of the interest of the consumers and for establishment of Forums for easy, un-cumbersome and expeditious settlement of consumer disputes. As observed by the Supreme Court in Lucknow Development Authority Vs. M.K. Gupta, , the "consumer law meets long felt necessity for protecting the common man from the wrongs perpetuated by suppliers of goods and services". The observations of the Supreme Court are apt:

"In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various Legislations and regulations permitting the State to intervene and protect interest of the consumers have become a heaven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, as described as, "a network of rackets" or a society in which, "producers have secured power" to "rob the rest" and the might of public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting for it, is accepting it as part of life. The enactment in these unbelievably yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot."

32. In this context, it is appropriate to extract Section 3 of the Consumer Act, which is as under:

"(3) Act not in derogation of any other Law : The Provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

33. The Consumer Act provides for the constitution of Consumer Protection Council and Consumer Disputes Redressal Agencies. Chapter-III of the Consumer Act provides for hierarchy of District Forums, State Commissions and National Commission. Section 12 of the Consumer Act provides that the complaint be made to the District Forum by a consumer or the Central or the State Governments complaining defect in the goods sold or deficiency in service by the supplier of the goods or provider of the services. After receiving the complaint, the District Forum shall give a reasonable opportunity to the complainant as well as opposite party and shall proceed to settle the consumer dispute on the basis of evidence brought to its notice by the complainant and the opposite party. The District Forum or the State Commission is also empowered to refer the samples of the goods to laboratory for analysis. The Forums established under the Consumer Act shall be deemed to be civil Courts and some of the provisions of the Code of Civil Procedure, 1908 are also made applicable to the proceedings before the Forums, every proceeding before the Forum shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 of Indian Penal Code. Apart from this, the Act in Section 27 lays down the procedure for taking penal action against a person, who fails or omits to comply with the order of the District Forum or State Commission or National Commission as the case may be. Non-compliance or non-implementation of the order of the Forums entails imprisonment for a minimum term of one month which may extend to three years and imposing of fine of Rs.2,000/- to Rs.10,000/-.

34. The analysis of the provisions of the Consumer Act leaves no doubt that it is a special enactment aimed at protecting the consumers brought on to statute book as per the UN Resolution and it is a comprehensive code in itself. The enactment is intended to provide for Forums at the primary level, appellate level and apex level so as to settle the consumer disputes and give redressal to consumers. The remedies provided are not in derogation of the provisions of common law remedies by way of a suit or other remedies provided under other enactments. Indeed, Section 3 of the Consumer Act categorically says that the provisions of the Consumer Act "shall be in addition to and not in derogation of the provisions of any other law" for the time being in force. As observed by the Supreme Court in Lucknow Development Authority's case (supra), the Consumer Act intends to protect the common man for such wrongs for which the remedy under ordinary law has become illusory.

35. In Indian Medical Association Vs. V.P. Shantha and Others, , the question before the Supreme Court was whether a medical practitioner can be regarded as rendering "service" u/s 2(1)(0) of the Consumer Act. It was inter alia contended on behalf of the IMA that the definition of "service" does not take in its fold the medical service. The Supreme Court analysed the definition of service in Section 2(1)(0) of the Consumer Act as under:

"The definition of "service" in Section 2(1)(0) of the Consumer Act can be split up into three parts - the main part, the inclusionary part and the exclusionary

part. The main part is explanatory in nature and defines service to mean service of any description which is made available to the potential users. The inclusionary part expressly includes the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment amusement or the purveying of news or other information. The exclusionary part excludes rendering of any service free for charge or under a contract of personal service."

36. Applying the above parameters of the definition the Supreme Court held that the medical practitioners are not outside the purview of the provisions of the Act. The other contention was that the District Forum, the State Commission and the National Commission by the very nature of their composition cannot fully appreciate the complex issues which may arise for determination and therefore medical profession should be excluded from the jurisdiction of the Forums. Dealing with this the Supreme Court observed that since the goods or services in respect of which a complaint can be filed under the Consumer Act may relate to number of fields, it cannot be expected that the Members of the Consumer Forums must have expertise in the fields to which the goods or services are related. It will be for the parties to place necessary material and the knowledge and experience which members will have in the fields would enable them to arrive at findings on the basis of the material. It was further laid down as under:

"In complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to approach the civil Court for appropriate relief. Section 3 of the Consumer Act which prescribes that the provisions of the Consumer Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force preserved the right of the consumer to approach the civil Court for necessary relief."

37. The above enunciation of the Supreme Court clinchingly shows that the remedy of approaching the CLB constituted u/s 10-E of the Companies Act under the provisions of Section 45-QA(2) of the RBI Act is in addition to the remedy available under the Consumer Act. A depositor or depositors may approach either the Consumer Forum or the CLB u/s 45-QA(2) read with sub-section (9) of Section 58-A of the Companies Act for there is no apparent "exclusion of jurisdiction" of Consumer Forums for entertaining dispute at the behest of a depositor.

38. The next aspect of the matter is whether the provisions of the Companies Act and the RBI Act impliedly oust the jurisdiction of the Consumer Forums when the CLB is seized of the matter or passed an order at the instance of some of the depositors of NBFC. Hence, subsections (4-D) and (5) of Section 10-E and Section 58-A(9) of the Companies Act and Sections 45-Q and 45-QA of the RBI Act require to be examined, which are as under:

"10-E-(4-D) : Every Bench shall be deemed to be a civil Court for the purposes of

Section 195 and (Chapter XXVI of the Code of Civil Procedure, 1973) and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and for the purpose of Section 196 of that Code.

(5) Without prejudice to the provisions of sub-sections (4-C) and (4-D), the Company Law Board shall in the exercise of its powers and the discharge of its functions under this Act, or any other law be guided by the principles of natural justice and shall act in its discretion."

58-A(9) : Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as maybe specified in the order :

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter."

Sections 45-Q and 45-QA of the RBI Act are as under:

"45-Q: Chapter III-B to override other Laws : The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

45-QA. Power of Company Law Board to order repayment of deposit:(1) Every deposit accepted by a non-banking financial company, unless renewed, shall be repaid in accordance with the terms and conditions of such deposit.

(2) Where a non-banking financial company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted u/s 10-E of the Companies Act 1956 (1 of 1956) may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter."

39. Learned Counsel for the PCML also invited the attention of the Court to Sections 58-B and 58-E of the RBI Act. These are penal provisions which say that a Company which fails to comply with an order made by CLB under sub-section

(2) of Section 45-QA of the RBI Act shall be punishable with imprisonment and that no Court shall take cognizance of any offence under the RBI Act except on a complaint made by an Officer of RBI.

40. A plain reading of the above provisions shows that there is no explicit exclusion of jurisdiction of Consumer Forum for entertaining consumer disputes at the behest of a depositor seeking repayment of his deposit from a NBFC. Nonetheless, learned Counsel for the petitioner submits in view of "non-obstinate" clause in Section 45-Q above, it is only the CLB which is empowered to pass order directing NBFC to make repayment of deposit to the depositor. Learned Counsel for the depositors trace the history of Legislation and amendment Acts which inserted the provisions for constitution of CLB in the Companies Act and which inserted provisions like Sections 45-Q and 45-QA in the RBI Act and submit that the amendments were never intended to exclude the jurisdiction of civil Courts and special Forums. Alternatively they submit that u/s 10-E(5) and the proviso to Section 58-A(9) of the Companies Act as per proviso to subsection (2) of Section 45-QA there is an obligation on the part of the CLB to give a reasonable opportunity of being heard to all persons interested in the matter. In the absence of such notice to the depositors in these cases, the order passed by the CLB, Eastern Regional Bench, cannot take away the jurisdiction of the Forums. The order passed by the CLB insofar as depositors is concerned does not exist in law as it did not comply with the mandatory provisions of Sections 10-E(5) and 58-A(9) of the Companies Act and proviso to Section 45-QA of the RBI Act.

41. Chapter IIIB which originally contained in Sections 45H to 45-Q was introduced by Banking Laws (Miscellaneous Provisions) Act, 1963 (Act 55 of 1963) with effect from 1-2-1964. The statement of objects and reasons reveals that the Legislation intended to bring NBFCs under the control of Reserve Bank of India.

42. Every NBFC was required to obtain Certificate of Registration under Chapter III-B from RBI and maintain proper assets and reserve fund and file returns by disclosing information. It may be noticed that by the time Act 55 of 1963 came into force, the Companies Act governed NBFCs insofar as incorporation, inviting deposits etc., were concerned. It was in this context that the Parliament enacted Section 45-Q giving overriding effect to the provisions of Sections 45-H to 45-Q.

43. Chapter IIIB of RBI Act was again amended by RBI (Amendment) Act, 1997 (Act 23 of 1997) with effect from 9-1-1997. This Act inserted Sections 45-IA, 45-IB, 45-IC, 45-JA, 45-MA, 45-MB, 45-MC, 45-NA, 45-NB, 45-QA and 45QB. The statement of objects and reasons appended relevant Bill relating to Act 23 of 1997 shows that earlier the only recourse available to depositor was to approach Court of law for redressal of grievances and now powers have been vested with CLB also for directing the defaulting NBFCs to make repayment of deposits/interests with a view to protect the interest of the depositors. The purpose of the amendment therefore is to protect the depositors and not to exclude the

jurisdiction of civil Court for refund of deposit. By the time Section 45-Q was enacted by Act 55 of 1963, the Consumer Act was not in existence. The Consumer Act was enacted in 1986 and by that time Section 45-Q was in existence though Section 45-QA was not in existence. It is presumed that the Parliament is aware of all the existing laws before enacting any provision. Therefore it is correct to assume that when Parliament enacted Consumer Protection Act to give effect to UNO Resolution No.32/248, the Parliament is aware of Section 45-Q of the Act giving overriding effect to Chapter-IIB of the RBI Act and if the Parliament had thought it fit to exclude the jurisdiction of civil Courts and/or Forums, the Legislation would have indicated the same. Further, when Section 45-QA was inserted by Act 23 of 1997, the Parliament was aware that the Consumer Act is in force and if the jurisdiction of the Forums in regard to the matters dealt with by sub-section (2) of Section 45-QA was to be excluded, the Parliament would have indicated the intention to exclude the jurisdiction of Consumer Forums. Both the things are absent. Applying the principle of harmonious construction, it is appropriate and reasonable to hold that Section 45-Q read with Section 45-QA of the RBI Act does not either exclusively or impliedly exclude the jurisdiction of the Consumer Forums. The effect of "non obstinate" clause in Section 45-Q should be construed as only enabling the CLB to suo motu issue orders to NBFC to repay the deposits. The same cannot be construed as depriving a depositor the right to choose the remedy either before civil Court or Forums or CLB. The statement of objects and reasons appended to the Bill relating to Act 23 of 1997 inter alia states :

"..... Whereas earlier the only recourse available to the depositor was to approach the Court of Law for redressal of grievances, powers have been vested with the Company Law Board for directing the defaulting NBFCs to make repayment of the deposits/interests with a view to protect the interests of the depositors."

Therefore, the non obstante clause in Section 45-Q only means that notwithstanding the remedy available in a Court of Law for redressal of grievance or in any Forum under the Consumer Act, the CLB is vested with the power of suo motu directing the defaulting NBFCs to make payment. Incidentally, a depositor may also file an application before the CLB for repayment of the deposit.

44. The provisions of Consumer Act shall have to be interpreted as broadly as possible to enlarge the jurisdiction of Forums under the Consumer Act and not to divest them of jurisdiction. This view is supported by the judgment of the Supreme Court in Lucknow Development Authority case (supra) wherein their Lordships held as under:

"The provisions of the Act, thus, have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented Legislation. The primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the

language of the provisions and is not contrary to attempted objective of the enactment."

45. In *M/s. Fair Air Engineers Pvt. Ltd. and another Vs. N.K. Modi*, , the question arose whether a party is disabled to approach the State Commission having regard to an arbitration clause in the agreement creating jural relationship between him and another person and whether the Forum under the Consumer Act is required to stay pending before it u/s 34 of Arbitration Act, 1940, While holding that the proceedings before the Forums are "legal and judicial proceedings", the Hon"ble Supreme Court nevertheless held that in view of the provisions of Section 3 of the Consumer Act the parties do not get an automatic right to have the proceedings stayed and that it is for the Forum to stay the proceedings u/s 34 of the Arbitration Act, if it comes to conclusion that in peculiar facts and circumstances of the case it is appropriate to do so. The Supreme Court referred to Lucknow Development Authority case and reiterated that the Consumer Act intends to relieve the consumers of cumbersome proceedings or civil actions. All consumer disputes can be brought before Forums unless the Forums on their own come to the conclusion that adjudication of the dispute would be otherwise than under the Consumer Act. It was also held that the Legislature intended to provide a remedy in addition to other remedies and not in derogation of the existing remedies. The Supreme Court ruled as under:

"Accordingly, it must be held that "the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available u/s 9 of the CPC i.e., to avail of right of civil action in a competent Court of civil jurisdiction. Nonetheless, the Act provides the additional remedy."

46. The judgment of the Supreme Court in *Sat Pal Mohindra Vs. Surindra Timber Stores*, , also supports the view that notwithstanding the remedy elsewhere the District Forum under the Consumer Act has jurisdiction to entertain the consumer disputes cases.

47. The submission of the learned Counsel for the PCML that by virtue of the provisions u/s 45-QA read with Section 58A(9) and Section 45-Q of the RBI Act the jurisdiction of the Consumer Forum stands excluded and the orders passed by the District Forum and the State Commission are without jurisdiction, if accepted would amount to doing violence to the language of Section 3 of the

Consumer Act. Accordingly, on this point it is to be held that the provisions of the Companies Act or the RBI Act referred to hereinabove do not either specifically or impliedly exclude the jurisdiction of the District Forum and/or State Commission.

48. Now, I may take up the question of effect of order dated 27-5-1998 passed by the CLB on the proceedings before the District Forum/State Commission or on the proceedings u/s 27 of the Consumer Act.

49. The CLB is constituted by the Central Government and the said Board shall exercise and discharge powers and functions as may be conferred on it by or under the Companies Act or any other law and shall also exercise and discharge such other powers and functions of the Central Government under the Companies Act or other law as may be conferred on it by the Central Government. Notwithstanding subsection (1-A) of Section 10-E of the Companies Act, the civil Courts exercised jurisdiction u/s 9 of the Code of Civil Procedure, till sub-section (9) of Section 58-A was inserted by the Companies (Amendment) Act, 1977 with effect from 24-12-1977 conferring powers on the CLB to entertain an application of the depositor for repayment of money. After 1977, till the enactment of Consumer Act in 1986, both the civil Courts as well as the CLB entertained applications from the depositors for refund of deposits. After the Consumer Act, the Forums established under it started granting redressal to the depositors having regard to the broad definition "service" adumbrated in Section 2(1)(0) of the Consumer Act. Ultimately, to provide an additional speedy remedy, the Parliament enacted RBI (Amendment) Act, 1997 inserting Section 45-QA giving power to CLB constituted u/s 10-E of the Companies Act which "may, either on its own motion or on application of the depositors" order NBFCs to make repayment of such deposits. This background should be kept in mind while examining the order of the CLB, Eastern Region Bench, Calcutta, dated 27-5-1998.

50. In July 1997, the CLB, Calcutta received applications u/s 45-QA of the RBI Act. By 30-4-1998, it received 2360 applications. Therefore, the CLB, taking into account the increased volume of applications, waived the procedure of making an application in Form No.4 under the CLB Regulations, 1991 and decided to exercise suo motu powers of ordering repayment to the depositors who approached the CLB with or without application in Form No.4. In paragraph 8 of the order of the CLB, it is stated as under:

"This order covers both the depositors who have applied for in the Form No.4 and the depositors who have not applied for."

51. In the first paragraph of the order, the learned Member who presided over the proceedings of the CLB observed as under:

"This order relates to a large number of applications filed u/s 45-QA of the Reserve Bank of India Act, 1934 (hereinafter referred to as the "RBI Act" by various depositors of M/s, Prudential Capital Markets Limited (hereinafter referred to as "PCML") for non-repayment of deposits by the company after the

due dates of their maturity. Since the issues involved and reliefs sought for are the same, all the applications are being disposed of by this single order."

52. The CLB served notices upon the Company for hearing on 28-10-1997, 27-11-1997, 22-12-1997 and 16-2-1998 and heard the Managing Director of PCML, who submitted about the problems the Company is facing due to which the Company could not repay the deposits and that the Company issued a general letter to all the deposit-holders in October, 1997 informing them about the financial status of the Company. After hearing the Company, the CLB directed them to submit a scheme for repayment of deposits. Accordingly, the Company submitted two schemes. After receiving the scheme what happened before the CLB may be noticed by extracting from the order of CLB.

"This Bench has been receiving applications in thousands in respect of PCML. As this Bench cannot afford to accommodate thousands of applicant depositors to hear their distress as regards non-repayment of deposits, notices have been issued to 175 depositors covering all categories of deposits to attend the hearing on three consecutive dates i.e., 12th, 13th and 14th May, 1998 and react to the schemes presented by the company. Notice of hearing was also issued to the General Manager, RB1, Dept. of Supervision (Financial Companies), Calcutta. But no representative from RB1 was present at the hearing on those days. 49 depositors have attended the hearing on those days when Shri Vinod Baid, Managing Director, and other senior executives of PCML were also present."

All the 49 depositors who were present on the day of hearing rejected the schemes and pressed for immediate payment, because, according to them, they invested hard-earned savings and the money is required immediately for education, medical treatment, old age, marriage, hospitalisation etc. The CLB "keeping in mind the interests of all concerned", formulated a modified repayment schedule covering "all the deposits received by the company on different schemes."

53. The CLB also observed that notwithstanding the scheme, the PCML may be at liberty to make repayments of deposits along with interest before the stipulated time frame. The CLB in its scheme also directed the PCML to start repayment as per the scheme and to circulate a copy of the order of CLB within five weeks from the date of receipt of the order to all the depositor-applicants in the following words :

"The company is directed to circulate a copy of this order within 5 (five) weeks from the date of receipt of this order to all those depositor-applicants, who have filed their applications with this Bench and also to circulate the operative portion of this order to other depositors.

The company shall publish the scheme of repayment of deposits as ordered by this Company Law Board in the leading newspapers in English, Bengali and Hindi, within one month from the date of receipt of this order."

54. The scheme formulated by the CLB which is contained in paragraph 16 of the order though says in clause 16(viii) that the scheme covers all the depositors, the beginning of the order from paragraphs 1 to 15 shows that except 175 depositors all the depositors were not given individual notices or general notice before formulating the scheme. The reading of the order excluding paragraph 16 shows that the CLB is concerned only with 2360 applications either made in Form No.4 or not, but taken on file by the CLB waiving the relevant regulation. The reasons for passing an order formulating the scheme covering all the depositors under different schemes of PCML are conspicuous by absence. Indeed, the CLB directed PCML to publish the so- called scheme in leading news papers in English, Bengali and Hindi only and not in oilier languages or language news papers. It is, therefore, doubtful to say that the scheme applies to all the depositors all over India, lie that as it may, it has to be seen whether the scheme formulated by the CLB, Calcutta does not satisfy seminal rule of natural justice.

55. Sub-section (5) of Section 10-E of the Companies Act lays down that the CLB shall in the exercise of its powers and the discharge of its functions under the Companies Act or any other law be guided by the principles of natural justice. The proviso to sub-section (9) of Section 58A categorically lays down that CLB may, before making any order under subsection (9), give a reasonable opportunity of being heard to the company and the other persons interested in the matter. Likewise, the proviso to sub-section (2) of Section 45-QA mandates that CLB may, before making any order under subsection (2), give an opportunity of being heard to NBFC and the other persons interested in the matter. Elaborate reasoning is not required to infer that "the other persons interested in the matter" appearing in the proviso to sub-section (9) of Section 58-A of the Companies Act and the proviso to sub-section (2) of Section 45-QA of the RBI Act also include the depositors and other creditors of NBFC. It also docs not require any authority to say that any provision which adumbrates the principles of natural justice should be interpreted as a mandatory provision. Though the two provisions use the word "may", the same should be interpreted as mandatory. Obligation is on the part of the CLB to order notices to all the depositors in a matter like this. How a notice is sent or information is communicated about the cases filed before the CLB u/s 45-QA(2) of the RBI Act or Section 58-A(9) of the Companies Act is altogether different matter.

56. In this case, the PCML has not made any attempt to place before me the alleged general letter issued by PCML to all the deposit-holders alleged to have been sent in October, 1997. The PCML has also not placed before me any publication in the newspapers before or/and after the scheme was formulated by the CLB. Indeed, it is the complaint made in WP No.7920 of 1999 that though there is exchange of legal notices, the PCML took its own time to inform the depositors only on 17-11-1997. But, even in the communication dated 17-11-1997, the PCML did not inform about the pendency of the case before the CLB. Even before the Consumer Forum, though the PCML received notice on 15-12-1998 in CD No.800 of 1998 (relating to WP No.7920 of 1999), the PCML

did not file counter. Indeed, it is contended by the learned Counsel for the depositors that even before the State Commission the PCML did not make any serious attempt. After the Consumer Forum passed orders, the lawyer sent notice on 3-3-1999 demanding payment as observed by the Forum. At this stage, by letter dated 17-3-1999, the PCML informed the Counsel for the depositors about the order passed by the CLB, Calcutta.

57. The conduct of the PCML raises questions regarding bona fide attempts of PCML to render impeccable service. Therefore, the learned Counsel for the depositors are justified in contending that insofar as the depositors in these cases are concerned, the order passed by the CLB is a nullity and it has no binding effect whatsoever on the proceedings before the Forums under the Consumer Act. Further, as per the legal position, the proceedings before appropriate Bench of CLB should be initiated by the aggrieved party at the place of company's registered office. This is cumbersome procedure. Therefore, all the depositors cannot be expected to appear before the CLB, Calcutta, especially when there is no notice validly served on all the depositors. The judgments of the Supreme Court referred to above support the view that when the ordinary remedy provided under the alternative law is cumbersome, the consumer cannot be deprived of the remedy before the Consumer Forums.

58. The summary of the findings under Point No.1 for consideration may now be given.

(i) A writ of prohibition cannot be granted unless want of jurisdiction is apparent and if want of jurisdiction is not apparent, the applicant must wait until the decision making body passes orders and seek a writ of certiorari.

(ii) A writ of prohibition ordinarily cannot be granted to stop execution of implementation or the decision.

(iii) The grant of writ of prohibition is also governed by other principles which ordinarily govern the grant of extraordinary writs like delay and laches, availability of alternative remedy etc.

(iv) The provisions of Sections 45-Q and 45-QA of the RBI Act and Section 58-A(9) of the Companies Act, do not either expressly or impliedly bar the jurisdiction of the Forums constituted under the Consumer Protection Act, from entertaining a consumer dispute case at the instance of the depositor claiming repayment of the deposit from a non-banking finance company. In view of Section 3 of the Consumer Protection Act, remedy under the said Act is an additional remedy and the same cannot be taken away either by the RBI Act or by the Companies Act.

(v) The order of the Company Law Board, Eastern Region Bench, Calcutta dated 27-5-1998 cannot be construed as either taking away the right of the depositors in these cases to approach the Consumer Forum or nullifying the orders passed by the District Forum/State Commission.

Point No.1 is answered accordingly.

In Re Point N02.

59. A reading of the order passed by the CLB shows that it was not applied to all the consumer cases pending in various Forums in Andhra Pradesh. Though the Managing Director appears personally pursuant to the notices issued by the CLB on 28-10-1997, 27-11-1997, 22-12-1997 and 16-2-1998, the PCML appears to have intentionally withheld information from the CLB. Likewise, though PCML, received notices from the District Forums in all the consumer cases, they did not choose to file counter. Aggrieved by the orders of the District Forums, PCML, in some cases, filed appeals to the State Commission. Before the appellate authority, in the memorandum of grounds, for the first time, the PCML raised the question of jurisdiction of the forum relying on the provisions of the RBI Act and the Companies Act. The PCML also brought to the notice of the State Commission about the orders passed by the CLB on 27-5-1998. When the State Commission posted the matter for oral submissions of the PCML on 22-4-1999, the writ petition was filed in this Court on 12-4-1999. In the affidavit accompanying the writ petition, the PCML did not mention that an appeal is filed and pending before the State Commission. They intentionally suppressed the fact from this Court to obtain an interim order in one case, which was followed in all other cases. The suppression of essential necessary facts by itself can be a ground for refusing the discretionary relief under Article 226 of the Constitution, The proceedings for a writ of prohibition are no exception to this rule. On one hand, PCML did not apprise the CLB, Calcutta about the cases that were filed in various District Forums in Andhra Pradesh. On the other hand, when they approached this Court questioning the orders of the District Forums when they were being implemented by filing application u/s 27 of the Consumer Act, they intentionally suppressed the factum of filing appeal before the State Commission. For these reasons also, the petitioner is not entitled for any relief in these writ petitions as the petitioner is guilty of suppressio veri, suggestio falsi. On point No.2, I hold accordingly.

In Re point No. 3 :

60. It is well settled that a petition under Article 226 of the Constitution cannot be rejected on a mere ground that an inappropriate writ is sought. It is always within the plenary power of the High Court to mould the relief having regard to the facts presented before it. As held by me, after the Tribunal/Forum exercises its power and renders a decision, the appropriate relief to be sought is a writ of certiorari. The question, therefore, is whether any order can be passed in favour of the petitioners. The learned Counsel for the petitioners places reliance on the judgment of a Division Bench of this Court in Meesa Varalakshmi Vs. Andhra Pradesh State Consumer Disputes Redressal Commission and Another, and submits that in appropriate cases this Court can quash a decision resulting in improper exercise of jurisdiction. The Division Bench of this Court in Varalakshmi's case (supra) laid down as under:

"While there cannot be any dispute about the existence of the supervisory jurisdiction of this Court on the Forums under the Consumer Protection Act under the provisions of Article 226 of the Constitution of India and hence there would be powers to entertain revisions against decisions of the Forums under the Act, yet it is well-known that where provisions of appeal are provided against any order, the revisional jurisdictions can be exercised, if at all, only in extraordinary occasions. The theory of alternative remedy is as much applicable to Article 227 of the Constitution as to the entertainment of applications under Article 226."

61. The exercise of jurisdiction under Article 226 of the Constitution, especially issuance of a writ of certiorari, is governed by well established rules of prudence. The High Court has discretion to entertain or not to entertain a writ petition having regard to the facts of each case. It has imposed upon itself some restrictions on the exercise of extraordinary power. One such restriction is, availability of effective, efficacious alternative remedy. Indeed, a proceeding for a writ of prohibition is not entertained if the party aggrieved has ample remedy by way of appeal against the order of judgment of the inferior Court. In some of the cases before this Court, PCML has already filed appeals and in some cases appeals have not been filed. Where appeals are filed, there is further remedy of revision to National Commission. Therefore, it is a case where the existence of alternative remedy operates as a bar for exercise of jurisdiction under Article 226 of the Constitution. (See Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, Therefore, no relief can be granted to the petitioner in these writ petitions.

Point No.3 is answered accordingly.

62. For all the above reasons and the findings recorded on the various points, all the writ petitions are dismissed with costs of Rs.1,000/- in each case.