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**(2001) 09 RAJ CK 0088**

**In the Rajasthan High Court**

**Case No : Civil Special Appeal (Writ) No. 834 of 1999**

Punjab National Bank

APPELLANT

Vs

Purewell and Associates Ltd.

RESPONDENT

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**Date of Decision : 04-09-2001**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Rajasthan High Court Ordinance, 1949 — Ordinance 18, Ordinance 43

**Citation : AIR 2002 Raj 13 : (2002) 2 RLW 963 : (2002) 1 WLC 67**

**Hon'ble Judges : P.P. Naolekar, J;Gyan Sudha Mishra, J**

**Bench : Division Bench**

**Advocate : G.L. Sanghi, N.K. Maloo, Hair Shankar, Arvind Gupta and Satish Bijarnia, for the Appellant; Paras Kuhad and Sunil Nath, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Naolekar, J.—Respondent No. 1, herein, M/s. Purewal & Associates Limited (hereinafter shall be referred to as "the respondent Company") moved applications before the Debts Recovery Tribunal under Order 23 Rule 3 read with Sec. 151 of the CPC for recording the compromise/settlement arrived at between the parties and passing of the Decree in terms thereof. Appellant-Punjab National Bank (hereinafter shall be referred to as "the appellant Bank") contested the said applications by filing reply. By order dated 15.12.1998 the learned Debts Recovery Tribunal has rejected the applications of the respondent Company filed under Order 23 Rule 3 of the CPC holding that the compromise cannot be recorded as it was not in writing signed by the parties. Being aggrieved by the said order dated 15.12.1998 of the Tribunal, the respondent Company filed two writ petitions bearing S.B. Civil Writ Petitions No. 6681/98 and 6682/98 challenging the order passed by the Debts Recovery Tribunal, Jaipur on 15.12.1998 refusing to record the alleged compromise entered into between the respondent Company and the appellant Bank.

2. It is alleged by the respondent Company in the writ petitions that the

respondent Company registered under the Companies Act, 1956 is carrying on the business of watch components and watch movement making at Solan District. In order to finance the project of the respondent Company, a Bridge Loan of Rs. 120 lacs was taken from the appellant Bank by the respondent Company. As the respondent company failed to pay the entire loan amount and the interest thereon the appellant Bank, the appellant Bank filed two civil suits in the High Court of Himachal Pradesh against the respondent Company bearing C.S. No. 53/1992 and 54/1992. Civil Suit No. 53/1992 was for Rs. 194.38 lacs and Civil Suit No. 54/1992 was for Rs. 741.91 lacs. During the pendency of the Civil Suits. Recovery of Debts due to Banks and Financial Institutions Act, 1993 (Central Act No. 51 of 1993) was enacted under which Debt Recovery Tribunal for the States of Himachal Pradesh, Punjab, Haryana, Rajasthan and U.T. of Chandigarh was established at Jaipur. The High Court of Himachal Pradesh vide its order dated 25.11.1994 transferred both the civil suits to the Debt Recovery Tribunal, Jaipur where they were registered as O.A. No. 391/1996 and O.A. No. 500/1996.

3. The respondent Company approached the appellant Bank to settle the dispute pending in both the suits and vide its letter of October, 1995 voluntarily offered a sum of Rs. 277.53 lacs to the appellant Bank to liquidate all the alleged outstanding against the respondent Company. In September, 1997 the appellant Bank asked the respondent Company to attend its zonal office at Chandigarh and as per the respondent Company the appellant Bank demanded a sum of Rs. 367 lacs for settling the dispute. The respondent Company accepted the offer and agreed to pay the amount so demanded and accordingly submitted a letter for payment of final amount of Rs. 367 lacs. Again the representative of the respondent Company was called by the Zonal Office of the appellant Bank and suggested that the settlement can take place at Rs. 375 lacs. In order to buy peace, the respondent Company consented to the said figure and submitted its acceptance letter dated 30th September, 1997. The appellant Bank again called the respondent Company at its Zonal Office in the month of November, 1997 and a proposal was given to enhance the figure of Rs, 375 lacs to a total sum of Rs. 400 lacs. The respondent Company again accepted the proposal of the appellant Bank and gave its consent. Later on the respondent Company was informed by the respondent Bank's Zonal Office, Chandigarh that the proposal of Rs. 400 lacs was finally recommended for approval of the Head Office at Delhi in December, 1998, thus, a compromise has been arrived at between the parties but still on 25th of May, 1998 the Executive Director of the appellant Bank invited the Managing Director of the respondent Company for "discussion on the matter and coerced him to enhance the amount to Rs. 412 lacs. On the very next day the Managing Director of the respondent company was asked to submit a fresh letter of consent for payment of Rs. 417 lacs towards the final compromise amount.

4. Again on 11.6.1998 the Managing Director of the respondent Company was called by the General Manager (Recovery Cell) of the respondent Bank in New Delhi and he was coerced to settle the dispute for a sum of Rs. 430 lacs. The

Managing Director of the respondent Company again finally agreed to it to buy peace. Then the appellant Bank made an offer to settle the dispute for a sum of Rs. 475 lacs. This amount was agreed to between the parties on the offer having been given by the appellant Bank and being accepted by the respondent Company. There was a final settlement between the Parties. Though not required, still the compromise was duly discussed and agreed to in the meeting of the Managing Committee of the appellant Bank held on 14th/15th of September, 1997. The respondent Company accepted the offer of the appellant Bank for payment of Rs. 475 lacs and the respondent Bank accorded its consent. The compromise was entered into between the Parties on the following terms of settlement:-

(a) Rs. 430 lacs shall be paid as down payment within 45 days from the date of communication of consent,

(b) Balance amount of Rs. 45 lacs shall be paid in six monthly installments and post dated cheques shall be issued for each installment.

The acceptance of the appellant Bank is recorded in the meeting held on 14th/15th of September, 1998 which was signed by the General Manager, General Manager and Chief (CAD), (Members of the Committee), Chief (PAD), Executive Director and the Management Committee.

5. The appellant Bank entered appearance and filed its reply to the writ petitions wherein the appellant Bank raised certain preliminary objections as to the maintainability of the writ petitions. As per the appellant Bank, an appeal is provided under Sec. 20 of the Act of 1993 against the order of the Tribunal; the writ petitions have been filed to delay the proceedings before the Tribunal and that the respondent Company is filing frivolous application in the proceedings pending before the Tribunal with malafide intentions to delay the proceedings. It is alleged by the appellant Bank that no compromise was arrived at between it and the respondent Company. It is denied that in the meeting of the Managing Committee of the appellant Bank the offer of the respondent Company was accepted and it was recorded in the minutes of the meeting. In fact the offer of the respondent Company for Rs. 475 lacs in both suits was considered but it was rejected by the appellant Bank. The appellant Bank has never made any offer. These were the respondent Company's offers which were considered by the appellant Bank from time to time but they being wholly inadequate were not acceptable to the appellant Bank and, therefore, the appellant Bank declined to accept the same. In the Meeting of the Management Committee held on 10.10.1998 the offer made by the respondent Company of Rs. 4.75 crore was declined. As per the policy of the appellant Bank the matter of compromise involving losses/writing off of Rs. 10 lacs or more are to be considered by the Management Committee under Clause 13 of the nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970 (hereinafter shall be referred to as "the Scheme of 1970"). Hence, there was no compromise arrived at between the parties. It is denied that the compromise was accepted in the

meeting of the Management Committee held on 14th/15th of September, 1997.

6. The learned Single Judge after hearing the learned counsel for the parties decided both the writ petitions by a common order dated 20.8.1999 allowing the same. Aggrieved by the said order passed in the writ petitions the appellant Bank has preferred these two appeals.

We are extensively reproducing and referring to various paragraphs of the order of the learned Single Judge as the counsel for the respondent Company has assailed the maintainability of these special appeals on the ground that the order of the learned Single Judge passed on 20.8.1999 represents an exercise of powers under Article 227 of the Constitution of India and in that view of the matter the Special Appeals filed under Ordinance 18 of the Rajasthan High Court Ordinance, 1949 are not maintainable. This is recorded by the learned Single Judge in its order dated 20.8.1999:-

"These two writ petitions have been filed under article 226/227 of the Constitution of India against the common order dated 15.12.1998, arising out of the applications filed under Order 23 Rule 3 read with Sec. 151 of the C.P.C.

It is stated that the matter had gone for approval to the Managing Committee which was competent to approve such proposal of compromise and the proposal was accepted in the meeting dated 14/15 September 1998. The petitioner accepted the offer and gave his consent. Certain other conditions in regard to schedule of payment were also mentioned in the proposal in the meeting held on 14/15th September, 1998.

To the query put by the Court whether this matter can be decided finally under Article 226/227 of the Constitution of India by the Single Bench, Mr. S.M. Mehla, learned Advocate General for Rajasthan appearing on behalf of the respondent Bank had submitted on 21.9.1999 that the matter can be decided and finally disposed of by the learned Single Bench in the circumstances of the case for having supervisory power under Article 226/227 of the Constitution of India under the provisions of Section 18 of the Debt Recovery Act.

The resolution/compromise/proposal dated 14th of September, 1998 (photo copy of the same has been produced on record by the P.N.B.) it is numbered COMP/PAD/58/98 dated 14th September, 1998. It reads to be a document of Managing Committee. It shall be proper to reproduce certain aspects as under:-"

Therefore paragraphs of the document dated 14th of September, 1998 have been reproduced in the order and then the learned Single Judge has recorded thus:-

"Objection has been taken by the bank that even though the above said proposal reproduced and attached "Annexure A" was made but it was the Managing Committee which was the ultimate authority to approve the same. Instructions dated 12th September 1997 by the head of this institution had been placed on the record for the expeditious recovery of the amount. As per the circular it has been mentioned that one time settlement can be made even by waving interest

and even some other part of the principal. In Para 8, about the competency of the authority, it is mentioned that the cases beyond 10 lacs would be decided by the Managing Committee. In Para 20 of the said circular, it is mentioned that the formation of committees as per the guidelines for all purposes even for writing off of dues/waiver of legal proceedings/compromise shall be considered by the respective authorities.

At the time of arguments it is not disputed by the parties that the proposal by the Committee was made and was sent for approval to the Executive Director/Chairman cum M.D. The Executive Director had signed the proposal on 17.9.1998. The Managing Committee had also signed it on 18.9.1998, meaning thereby that the proposal sent by the Committee had been duly approved by the Managing Committee/Executive Director, which was the only requirement as per instructions i.e. the proposal submitted by the Committee was accepted by the Managing Committee/the Executive Directory which is a factual position and is not denied in view of the record of proceedings.

In the issue which arises in The present cases it reveals that in the circumstances the Bank was seized of the financial position, the asset, the liabilities the sickness of the company, the value of the machinery the Bank constituted the committee, which went through all these aspects and proposed proposal for consideration of the Managing Committee. The Managing Committee, and the Executive Director had approved the proposal. The proposal was agreed to by the petitioner company. In the circumstances, in my opinion the petitioner was justified to say that a compromise between the parties had taken place.

It is not disputed by the Bank in the written statement made by it that the proposal is to be proposed by the Committee as enumerated above which was a recommendatory committee, comprising of senior executives. The document dated 14th of September, 1998 was the proposal of compromise recommended by the Bank.

The signature contained at the bottom of the document were of Chief (PAD), Chief (CAD), bearing the date of 15th of September, 1998, General Manager (CADO) dated 15th Sept. 1998 and General Manager (PAD) dated 17th Sept., 1998.

The said proposal was submitted to the Executive Director of the Bank and to the Chairman cum Managing Director of the Bank.

As per the circular No. 3/97, as reproduced above the decision was to be taken by the three Authorities set out under Appendix A2 and any one of the aforesaid Authorities were by itself, competent to accept or reject the compromise recommended by the Recommendatory Committee.

Circular No. 3/97 dated 12th September, 1997, provides the competence of authority to expedite the proposal, to take the final decision. This proposal was sent to the Executive Director and the Executive Director had accepted the said

compromise on 17th of September, 1998. When the proposal had been properly processed at the level of Zonal Officer, at the level of Head Office and finalized at all the three levels, the recommendations were settled at 475 lacs which was the offer made at the behest of the Head Office, put up and recommended by the Committee and accepted by the petitioner.

The document dated 14th Sept. 1998 also brings out the fact that after the proposal made by the Recommendatory Committee and after having acceptance of Executive Director, the matter was placed further before the Chairman-cum-Managing Director for his acceptance and that the Chairman cum Managing Director also appended his signature to the said proposal on 18th Sept., 1998, obviously by way of acceptance of the proposal recommended for acceptance.

The document dated 14th Sept., 1998 in fact states in terms that the acceptance of the proposal by the Chairman on 18th Sept. 1998 was not in his capacity as Chairman cum Managing Director alone but the said acceptance was on behalf of the Managing Committee. This is evident from the fact that the Chairman has appended his signature under seal of Managing Committee. It is thus stated that the document dated 14th Sept., 1998, brings out that the Managing Committee itself accepted the proposal recommended by the Recommendatory Committee on 18th Sept., 1998 and that the acceptance on behalf of the Managing Committee was recorded under the signature of the Chairman dated 18th Sept., 1998.

In view of the fact that the Executive Director as also the Chairman cum Managing Director were both individually empowered to act on their own as the final decision makers, the acceptance of the pro-posal by either one of the officials, would by itself be individually competent to constitute a contract between the Parties. In this case the recommendations of the Committee were accepted by all three bodies acting individually under lay and would be competent enough to constitute a valid and binding contract.

The exception made by the Bank that the proposal not accepted by the Managing Committee on 18th of September 1998, is factually incorrect and misleading. This argument is also devoid of the merit for the reason that under the relevant circular, the competency to decide the matter, finally decided not only by the Managing Committee but also to the Executive Director and Chairman cum Managing Director. In the present case the proposal was accepted by the Executive Director and the Chairman cum Managing Director ultimately on 18th September, 1998.

The document dated 14th Sept. 1998 has been signed by the General Manager, General Manager & Chief (CAD) (Members of Committee), Chief (PAD. They signed on various dates. It was signed by the Executive Director on 17th Sept., 1998. The aforesaid authority signed in token of accepting the aforesaid proposal of the Bank and ultimately it was approved and signed by the Managing Committee. On behalf of the Management Committee, it has been signed by the

Chairman but not in the capacity of the Chairman but in the capacity of Managing Committee. It is thus clear that there was a complete compromise between the Bank and the petitioner company whereby the entire claim of the petitioner Bank was adjusted for a sum of Rs. 475 lacs. Therefore, the decision taken by the Managing Committee of the Board held on 10th October, 1998, is of no significance."

7. After discussing the case on merits and arriving at the findings, the learned Single Judge has held that from the documents it is clear that the appellant Bank's offer of enhancement of the settlement upto Rs. 475 lacs was accepted by the respondent Company, there is hardly any necessity to ask the Tribunal to adjudicate on the settlement any more and in such circumstances with the above sale observations the Tribunal was directed to pass the appropriate order in accordance with law under Order 23 Rule 3 of the C.P.C. The parties were directed to appear before the Tribunal on 30.8.1999 for further proceedings. Thus, the learned Single Judge has given direction to the Tribunal to record the settlement of Rs. 475 lacs and to pass a decree in terms thereof.

8. The real question requires adjudication in these special appeals is as to whether the document dated 14th September, 1998 is a document of compromise arrived at between the parties. Before we deal with the document dated 14th September, 1998 we shall refer to certain Circulars of the appellant Bank.

Under Clause 18 of the Circular issued by the appellant Bank dated 12th September, 1997 declaring its policy on compromise/negotiated settlements, the powers are delegated to various authorities to enter into a compromise, write off of bad debt/loss/waiver of legal action, which reads as under:-

#### "18. DECISION LEVELS

In the meeting held on 26.4.1997 the Board has approved powers for compromise, write off of bad debt/loss/waiver of legal action of various Officers as under:-

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RM

Sr.RM/A GM(at Zonal Office)

ZM& DGM (in Zones Headed by GM)

GM(at Zone &HO)

ED

CMD

(Rupees in lacs)

(i) Writing off of bad debts/ losses, entering into compromise/Negotiated Settlements/Remission etc. where loss to the Bank per borrower/debtor does not exceed.

1.00

1.00

2.00

2.00

4.00

4.00

6.00

6.00

7.50

7,50

10.00

10.00

(ii) Waiver of legal action

(Ceased beyond Rs. 10.00 lakh would go to Management Committee)

The cases beyond Rs. 10.00 lacs would be settled by the Management Committee. Under Clause 20 it is provided that all proposals for write off of dues/waiver of legal proceedings/compromise shall be considered by the respective authorities, duly recommended by the Committees to be constituted at various levels as provided in Appendix "A". The Committee for recommendation is considered of following:-

(i) General Manager (PAD)

(ii) General Manager

(Credit-Incharge of Zone concerned)

(iii) Dy. General Manager/Asstt. General Manager/Chief- Credit/Credit (policy)/IRO

(iv) Dy. General Manager/AGM/Chief-PAD

The Committee constituted under Schedule "A" has to consider the proposal for write off of dues/waiver of legal action/appeal and for compromise/negotiate

settlement and then recommend it to Authority to take decision on that. In the present case the decision is in regard to amount involving more than 10 lacs rupees and the Authority to approve the recommendation made by the Committee would be Management Committee under Clause 18.

9. In exercise of the powers conferred by Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) the Central Government, after consultation with the Reserve Bank, has framed a Scheme called "The Nationalized Banks (Management & Miscellaneous Provisions) Scheme, 1970. Clause 13 of the Scheme of 1970 provides for the Management Committee of the Board which shall consist of the followings:-

(A) The Chairman,

(B) The Managing Director,

(C) The Executive Director.

(D) The Directors referred to in Cls. (b), (e) and (g) of Sub-section (3) of Sec. 9 of the Act;

(E) One Director nominated by the Board from amongst the directors referred to in Clause (d) of Sub-section (3) of Sec. 9 of the Act;

(F) One Director nominated by the Board from amongst the Directors referred to in Cls. (e), (f), (h) and (i) of Sub-section (3) of Sec. 9 of the Act.

Provided that the Directors nominated by the Board shall hold office for not more than six months at a time.

Under Sub-clause (5) of Clause 13 of the Scheme of 1970 the quorum for a meeting of the Management Committee is provided of four members. Under Sub-clause (6) it is provided that the minutes of a meeting of the Management Committee are required to be laid before the Board as soon as possible after the meeting.

10. The minutes of the Meeting dated 14th September, 1998 of the Recommendatory Committee (where company's proposal was discussed) records in the last paragraph as under:-

"Keeping in view the above, we may accept company's compromise "offer of Rs.475,00,000 in lump-sum against total recoverable dues of Rs. 18,24,701.08 as on 30.6.1998. Sacrifice of Rs. 13,49,82,701.08 as a result of compromise, will be appropriated by debit to revenue of Rs. 2,69,97,833.17, waiver of legal/other charges of Rs. 15,43,498.00 (including Law charges of Rs. 85,135.00 yet to be paid) and waiver of recorded/pending interest of Rs. 10,64,41,369.91 as on 30.6.98 plus future interest from 1.7.98.

Submitted for approval please."

The minutes are signed by Members of Committee, namely, General Manager on

13.9.1998; General Manager & Chief (CAD) on 15.9.1998; Chief (PAD) on 15.9.98, Executive Director on 17.9.1998 and signature of Chairman, Management Committee under the seal "Management Committee" on 18.9.1998. The aforesaid paragraph clearly mentions that the Committee has sent its recommendations for approval.

11. The learned Single Judge has held that the document dated 14.9.1998 has been signed by the General Manager, Chief (CAD) (Members of the Committee) and Chief (PAD). They signed it on various dates. It was signed by the Executive Director on 17th of September, 1998. The aforesaid Authority signed in token of accepting the aforesaid proposal of Bank and ultimately it was approved and signed by the Managing Committee. On behalf of the Management Committee it has been signed by the Chairman but not in the capacity of the Chairman but in the capacity of Managing Committee. It is thus clear that there was a complete compromise between the appellant Bank and the respondent Company whereby the entire claim of the appellant Bank was adjusted for a sum of Rs. 475 lacs. Therefore, the decision taken by the Managing Committee on 10th of October, 1998 is of no significance. According to the learned Single Judge the document dt. 14th of September, 1998 has been signed for and on behalf of the Management Committee on 18th of Sept., 1998 by the Chairman.

It is submitted by the counsel for the respondent Bank that the Management Committee held its meeting some time between the period 14.9.1998 to 18.9.1998 and approved the compromise proposal on 18th September, 1998. The compromise proposal bears the signature of the Chairman of the Managing Committee under the seal of Management Committee both being dated 18th September, 1998. The Bank has only produced the minutes of the meeting held on 9.9.1998 of the Management Committee wherein the next meeting was fixed on Wednesday the 30th September, 1998 but no minutes have been produced of the meeting dated 30th September, 1998. Similarly, no minutes have been produced of the meeting held of the Management Committee on 18th September, 1998. Thus the best evidence has not been produced by the respondent Bank wherein the Management Committee has approved the recommendation made by the Recommendatory Committee.

12. The finding of the learned Single Judge cannot be held to be correct that the Managing Committee was represented by the Chairman by putting his signature on 18th of September, 1998. The Chairman alone has no authority to approve the recommendation made by the Recommendatory Committee and it has to be approved by the Management Committee. Under Clause 13 the Management Committee consists of number of Members and the compromise proposal can be approved in a meeting held of the Management Committee attended by four Members which is the quorum provided under Sub-clause (5) of Clause 13 of the Scheme of 1970. The record produced before us clearly indicates that there was no meeting held on 18th of September, 1998 of the Management Committee. The meeting held on 30th of September, 1998 was

attended by only two Members-Mr. Rashid Jalani and Mr. R.S. Avasthi and, thus, adjourned for lack of the quorum. Ultimately the Managing Committee held the meeting on 10th of October, 1998 disapproving the compromise proposal.

The appellant Bank has produced before us the attendance Register of the Meetings of Management Committee showing attendance of the Members of the Management Committee in the meetings held on different dates. The Register shows that meeting No. 14/98 of the Management Committee was held on 12.6.1998; No. 15/98 meeting of the Management Committee was held on 23.6.1998; No. 16/98 meeting of the Management Committee was held on 7.7.1998; No. 21/98 meeting of the Management Committee was held on 9.9.1998; No. 22/98 meeting of the Management Committee was held on 30.9.1998, which was adjourned; adjourned meeting No. 22/98 of the Management Committee was held on 10.10.1998; No. 23/98 meeting of the Management Committee was held on 27.10.1998.

13. It is alleged by the appellant Bank that no meeting of the Management Committee was held on 14.9.1998 or in between the period from 14.9.1998 to 18.9.1998 which is proved from the record produced of the minutes of Management Committee's meetings and the attendance Register of meetings of the Management Committee. On 10.10.1998 the Management Committee has taken decision which is recorded at Item No. 29 of the Minutes which reads as under:-

"Item 29 Purewal and Associates Ltd., Branch-Jagjitnagar: Waive-ment of-Rs. 13,49,82,701.08 + interest w.e.f. 1.7.1998 (debit to Revenue Rs. 2,69,97,833.17) against total outstanding of Rs. 18,24,82,701.08 as on 30.6.1998 (Balance Rs. 7,46,32,045.25 + interest etc. Rs. 10,78,50,655.83. Compromise amount being Rs. 4.75 Cr.- General Manager (KNP) note dated 15.9.1998.

Management Committee discussed the proposal in detail and felt that the sacrifice amount on the part of the Bank particularly by way of debiting to Bank's revenue is quite large. It desired the matter be renegotiated so as to ensure that either there is no debit to Bank's revenue or it is kept to the minimum.

In case the party is not agreeable to increase the compromise amount, suit filed in Debt Recovery Tribunal may be pursued."

The aforesaid facts clearly revealed that on 14th September, 1998 the Committee has recommended the compromise proposal for approval to the Management Committee. The Management Committee took up the matter on 10.10.1998 and has not approved the proposal of compromise being for 4.75 crore. No meeting of the Management Committee was held on 14.9.1998 or or 18.9.1998. In the absence of any meeting by the

Management Committee which is the Authority to approve the compromise

beyond the amount of Rs. 10.00 lacs, no compromise can be said to have been legally arrived at between the parties. No meeting of the Management Committee was held between 14.9.1998 to 18.9.1998 to hold that recommendation of compromise was approved by the Management Committee and in token thereof the Chairman of the Management Committee appended his signature for and on behalf of Management Committee approving recommendations made by Recommendatory Committee. The learned Single Judge has erred in holding that the Parties have entered into a compromise on the basis of the document dated 14.9.1998.

14. Learned counsel for the respondent Company Shri Paras Kuhad has then argued that the powers exercised by the learned Single Judge in deciding the matter against the Debts Recovery Tribunal were under Article 227 of The Constitution of India and no intra- Court appeal is provided under Ordinance 18 of the Rajasthan High Court Ordinance, 1949 (hereinafter shall be referred to as "the Ordinance of 1949") against the judgment of Single Judge as a consequence thereof Division Bench can not adjudicate upon judgment delivered by Single Bench nor it can reverse the same.

On the other hand learned counsel for the appellant Bank Shri G.L. Sanghi has submitted before us that the jurisdiction of the Court under Article 227 of the Constitution of India is akin to the jurisdiction, what this Court has u/s 115 of the Civil Procedure Code. The Court can only decide jurisdictional issue in exercise of the powers vested in the High Court under Article 227 of the Constitution of India. The powers exercised by the learned Single Judge in deciding the matter in the writ petition are under Article 226 of the Constitution of India or in any case under Article 226 and 227 of The Constitution and, therefore, the appeal under Ordinance 18 of the Ordinance of 1949 before the Division Bench is maintainable.

15. Questions require determination are-whether the powers exercised by (the High Court under Article 227 of the Constitution is akin to revisional jurisdiction; whether powers exercised by the Single Judge in deciding the writ petitions were exclusively under Article 226 or were under Article 226 read with Article 227 of the Constitution of India or were exclusively under Article 227 of the Constitution and further, if it is held by this Court that the order passed by the learned Single Judge is in exercise of the powers under Article 227 of the Constitution of India then, whether, the Division Bench can exercise the powers in its Letters Patent jurisdiction under Ordinance 18 of the Ordinance of 1949 and entertain appeal? What is the jurisdiction of the High Court in deciding the matters under Article 226 or under Article 227 of the Constitution of India.

16. In the case of Satyanarayan Laxminarayan Hegde and Ors. v. Malkarjun Bhavanappa Tirumale (1), the Supreme Court has held that Article 227 may be wide in its amplitude than the provisions of Section 115 of the CPC but the High Court cannot, in exercise of its powers under that Section, assume appellate powers to correct every mistake of law. Here the question is not of assumption of

excessive jurisdiction or refusal to exercise jurisdiction or any irregularity or illegality in the procedure or any breach of any rule of natural justice but a decision is only an erroneous decision which error, not being apparent on the face of the record, cannot be corrected by the High Court in revision u/s 115 of the CPC or under Article 227 of the Constitution of India.

17. The Apex Court in the case of *Nibaran Chandra Bag v. Mahendra Nath Ghughu* (2), has held "that the jurisdiction conferred by Article 227 of the Constitution of India was not by any means appellate in its nature for correcting errors in the decisions of Subordinate Courts or Tribunals but was merely a power of superintendence to be used to keep them within the bounds of their authority. The High Court was not justified in the course they took in interfering with the findings of the Revenue authorities. They were not sitting as a court of appeal and had merely to consider, firstly, whether the tribunals had outstepped the limits of their jurisdiction, or secondly, whether the findings recorded were based on no material, or were otherwise perverse."

In *Mohd. Yunus v. Mohd. Mustagim and Others* (3), the Apex Court has held as under:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior court or tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court do not act as an appellate court or tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

18. In *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* (4), the Supreme Court has considered the scope of Article 226 or 227 of the Constitution of India and the powers of the court regarding factual findings. The Supreme Court has held that the High Court can set aside or ignore the findings of fact in an appropriate case, if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Courts below have come or in other words a finding which was perverse in law. Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the Court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities.

19. In the case reported in (Achutananda Baidya v. Prafulla Kumar Gayen and Ors. (5), it has been held by the Supreme Court:-

"The power of superintendence of the High Court under Article 227 is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the courts and tribunals, inferior to High Court, have done what they were required to do. The High Court can interfere under Article 227 in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers u/ Article 227 to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercises of jurisdiction or if its conclusions are perverse, If the evidence on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at the inferior court of tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction u/Article227, the High Court will be competent to quash such perverse finding of fact. The High Court, in such circumstances, will be competent to consider the validity of the finding of fact assailed before it with reference to materials on record. In this case, the High Court has rightly held that the appellate authority came to the finding of non-existence of oral agreement of reconveyance without considering the evidence on record."

20. In the case of Baby v. Travancore Devaswos Board and Others (6), it has been held that the High Court has powers under Article 227 of the Constitution of India to quash the orders passed by the tribunals if the findings of fact has been arrived at by non-consideration of the relevant and material documents the consideration of which could have led to an opposite conclusion. The power of the High Court under the Constitution of India is always in addition to the power of revision.

In the case of Industrial Credit and Investment Corporation of India Limited v. Grapco Industries Limited and Others (7), the Apex Court took a view that in exercise of the powers under Article 227 of the Constitution the High Court can go into the merits to find whether the order was justified or not and it can Interfere with the order if the same is made without jurisdiction. In an appropriate case it can itself correct the error made instead of setting aside the ex parte order.

21. From the aforesaid decision of the Apex Court it appears that although in

previous years the Apex Court and inclined to hold that the jurisdiction of the High Court under Article 227 of the Constitution merely encompassed a revisional jurisdiction but in the subsequent decision it has been repeatedly held that the powers under Article 227 of the Constitution, which is a power of judicial superintendence, is a wide power vested in the High Court and such power includes within its sweep the power not only in cases where the Court erroneously assume jurisdiction but also in the case the "order passed by the courts or tribunals, inferior to it, suffers from error apparent on the face of record as also in cases where the orders impugned represent an arbitrary or capricious exercise of the authority or discretion and even in cases where the order suffers from patent error or procedure or even in the cases where the exercise of power represent a finding on the basis of no material or is likely to result in manifest injustice. On consideration of the decisions rendered by the Apex Court cited above, we are of the view that the High Court's jurisdiction under Article 227 of the Constitution of India is not confined to correct the jurisdictional error akin to Sec. 115 of the Civil Procedure Code; it is open to the High Court to interfere even with the finding of facts of the subordinate court in exercise of the powers under Article 227 of the Constitution if it came to the conclusion that the said finding is without any evidence or has been arrived at on manifest misreading of the evidence thereby indulging in inappropriate exercise of jurisdiction or if conclusions are perverse. The High Court can always consider the validity of the finding of facts with reference to the materials on record. Therefore, we hold that the submission made by the learned counsel for the appellant that the powers of the High Court under Article 227 of the Constitution is confined to jurisdictional facts only and the High Court cannot go into the question of facts or record its own finding of facts in given circumstances, is not correct.

22. Learned counsel for the respondent Company Shri Paras Kuhad has submitted that the order passed by the learned Single Judge is in exercise of the powers under Article 227 of the Constitution of India and, therefore, no appeal lay under Ordinance 18 of the Ordinance, 1949. Reliance is placed on two decisions of the Apex Court *Umaji Keshao Meshram and Ors. v. Smt. Radhikabai and Anr.* (8) and *Lokmat Newspapers Pvt. Ltd. v. Shankarprasad* (9), The Apex Court in *Umaji Keshao Meshram's* case (supra) has said that no appeal under Clause 15 of the Letters Patent lies to the High Court against the order of a Single Judge of the High Court exercising jurisdiction under Article 227 of the Constitution. Other decision relied upon by the learned counsel also relates to Clause 15 of the Letters Patent of Bombay High Court. Under Clause 15 of the Letters Patent of Bombay High Court an appeal shall lie to the High Court of Judicature at Bombay from a judgment of the Judge of the High Court in pursuance to Sec. 108 of the Government of India Act of 1915, not being - (a) judgment passed in the exercise of appellate Jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court below, which is subject to the superintendence of the High Court, (b) an order made in the

exercise of revisional jurisdiction, (c) a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Sec. 107 of the Government of India Act of 1915, or (d) a sentence of order passed or made in the exercise of criminal jurisdiction. In paragraph 103 of the judgment it is said:-

"Under Clause 15 of the Letters Patent of the Bombay High Court no intra-Court appeal lay against an "order passed or made in the exercise of the power of superintendence under the provisions of Sec. 107 of the Government of India Act". By the same process of Interpretation by reason of which the phrase "pursuant to Sec. 108 of Government of India Act", in Clause 15 is to be read as "pursuance to Article 225 of the Constitution of India", the phrase "order passed or made in the exercise of the power of superintendence under the provisions of Sec. 107 of the Government of India Act" is to be read as "order passed or made in the exercise of superintendence under the provisions of Article 227 of the Constitution." The result is that an intra/Court appeal does not lie against the judgment of a single Judge of the Bombay High Court given in a petition under Article 227 by reason of such appeal being expressly barred by Clause 15 of the Letters Patent of that High Court."

Under Clause 15 of the Letters Patent of the Bombay High Court no intra-Court appeal lies against (i) a judgment passed in exercise of appellate jurisdiction against the appellate judgment, (ii) an order made in revisional jurisdiction, (iii) a sentence or order passed or made in exercise of the power of superintendence under the provisions of Sec. 107 of the Government of India Act of 1915. As per the judgment of the Supreme Court the exercise of powers of superintendence under the provisions of Sec. 107 of the Government of India Act, 1915 has to be read as an order passed or made in exercise of the superintendence under the provisions of Article 227 of the Constitution of India and, therefore, the Apex Court has held that the intra-court appeal does not lie under Clause 15 (4)(c) of the Letters Patent against the judgment given in a petition under Article 227 by reason of such appeal being expressly barred by Clause 15 of the letters Patent of the High Court.

23. It is settled law that right to file appeal is conferred under the statute, therefore, we have to see whether under Order 18 of the Ordinance of 1949 intra-Court appeal against the judgment/order passed by the Single Judge in petition exercising the powers under Article 227 of the Constitution of India is expressly barred? Ordinance 18 of the Ordinance of 1949 reads as under:-

"18. Appeal to the High Court from Judge of the Court.- (1) An appeal shall be to the High Court, from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court and not being an order made in the exercise of revisional jurisdiction and not being a sentence of order passed or made in the exercise of the power of superintendence under Sec. 43 or in the exercise of criminal jurisdiction) of one Judge of the High Court.

(2) Notwithstanding anything hereinbefore provided, an appeal shall lie to the High Court from a judgment of one Judge of the High Court made in the exercise of appellate jurisdiction in respect of a decree or order made in the, exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the judgment declares that the case is a fit one for appeal."

Ordinance 18 says that the appeal shall lie from the judgment of the Judge of the High Court except when (i) the judgment delivered by the Single Judge is in exercise of the appellate jurisdiction, against the decree or order made by the Court below, which is subject to superintendence of the High Court, in exercise of its appellate jurisdiction, unless the Judge concerned declares that the case is fit one for appeal, (ii) the order is made in exercise of the revisional jurisdiction, (iii) a sentence or order passed or made in exercise of the power of superintendence under Ordinance 43 of the Ordinance of 1949 or in exercise of criminal jurisdiction.

24. The question for consideration before this Court is whether the appeal lies under Ordinance 18 of the Ordinance of 1949 against the order passed by the Single Judge in exercise of the powers under Article 227 of the Constitution of India and, therefore, we have to see whether Article 227 of the Constitution of India is akin to Ordinance 43 of the Ordinance of 1949 and can we read Article 227 of the Constitution of India in place of Ordinance 43 of the Ordinance of 1949 (?) as has been done by the Apex Court wherein Article 227 was read in place of Sec. 107 of the Government of India Act, 1915. Ordinance 43 of The Ordinance of 1949 reads as under:-

"43 Power to call for returns etc. - The High Court shall have superintendence over all Courts, civil or criminal in the State for the time being subject to its appellate jurisdiction, and may, among other things do any of the following things, that is to say-

- (a) provide for their inspection and supervision of their work;
- (b) call for returns;
- (c) make an issue general rules and prescribe forms for regulating the practice and proceedings of such Courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts and returns submitted by them;
- (e) settle tables of fees to be allowed to Amins (Kariks or Nazirs) and all clerks and officers of Courts;
- (f) regulate all such matters as it may think fit with a view to the promoting of their efficiency and the maintaining of proper discipline.

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force and shall have been approved by

the Rajpramukh."

A bare reading of Ordinance 43 of the Ordinance of 1949 indicates that the High Court can exercise the power of superintendence over all courts civil or criminal, which are subject to its appellate jurisdiction. Sub-clause (a) to (f) provides for inspection and supervision of the work of the subordinate court, call for returns, make and issue general rules and prescribe forms for regulating the practice and proceedings of the courts below, prescribe forms in which the books, entries and accounts

shall be kept by the officers of any such Courts and returns submitted by them, to settle tables of fees to be allowed to Amins (Kariks or Nazirs) and all clerks and officers of Courts, and regulate all such matters as it may think fit with a view to the promoting of their efficiency and the maintaining of proper discipline. Provided such Rules, form and tables shall not be inconsistent with the provisions of any law for the time being in force and shall have been approved by the Rajpramukh. The entire tenor of Ordinance 43 of the Ordinance of 1949 with its heading "Power to call for returns etc.", indicates that the power of superintendence which is meant to be exercised by the High Court under Ordinance 43 appears to be on its administrative side and not the power of superintendence as contemplated under Article 227 of the Constitution of India.

25. The decisions of the Apex Court referred hereinabove indicate that the power of superintendence under Article 227 of the Constitution of India includes a power more than as provided in Article 226 of the Constitution of India. In the case *Hari Vishnu Kamath v. Ahmad Ishaque and Ors.* (10), the Apex Court has held that in exercise of the power under Article 226 of the Constitution of India the High Court can only annul the decision of the orders passed by the Courts below or tribunals whereas in exercise of the powers under Article 227 of the Constitution of India the High Court not only can quash the order of the Court below or the tribunals but can give further directions in the matter. This indicates that the powers under Article 227 of the Constitution of India are analogous to the powers given to the High Court under Article 226 of the Constitution of India.

26. Reading of Ordinance 43 of the Ordinance, 1949 does not indicate that the legislature has intended to confer powers on the High Court akin to Article 227 of the Constitution of India by Ordinance 43 of the Ordinance, 1949. Any judicial order passed by the High Court which relates to exercise of power of superintendence of the High Court over the inferior courts or tribunals on the administrative side under Ordinance 43, no appeal shall lie to the Division Bench under Ordinance 18 of the Ordinance of 1949. On a conjoint reading of Ordinance 18 read with Ordinance 43 of the Ordinance of 1949, we are of the view that Ordinance 18 does not debar the High Court to entertain an appeal against the order passed by the Single Judge in exercise of the powers under Article 227 of the Constitution of India. The decision of the Apex Court debarring the jurisdiction of the High Court to entertain appeal is based on interpretation of Clause 15 of the Letters Patent of the High Court of Bombay which is different

then that of Ordinance 18 of the Ordinance of 1949.

27. It is then submitted by the counsel for the appellant Bank that the order passed by the learned Single Judge is not an order passed in exercise of the powers only under Article 227 of the Constitution of India but the order is passed exercising the powers under Article 226 read with Article 227 of the Constitution of India. In Umaji Keshao Meshram's case (supra) the Apex Court has held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter. In the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.

In the case Hindustan Machine Tools Limited v. Industrial Tribunal, Jaipur and Anr. (11), the Apex Court has held that where the facts justify filing of petitioner both under Article 226 and 227 of the Constitution of India and the petition so filed was dismissed by the Single Judge on merits, the petition should be treated to have been made under Article 226 of the Constitution of India so as not to deprive the petitioner to file Special Appeal before the Division Bench. As per the law laid down by the Apex Court if the petition is filed under Article 226 and 227 of the Constitution of India, allegations made in the petition relate and prayer clause indicate that the relief sought is under Article 226 as well as under Article 227 of the Constitution of India and the Court has exercised the powers both under Article 226 and 227 of the Constitution of India, the party's right of filing an appeal should not be curtailed.

28. In the present matter both the petitions are filed under Article 226/227 of the Constitution of India. The relief sought for in the writ petitions is to call for the record of the Tribunal as well as the Bank concerning the settlement and/or compromise referred in the writ petition; to quash the order dated 15.12.1998 passed by the Debts Recovery Tribunal, Jaipur on the application of the petitioner under Order 23 Rule 3. of the CPC and to direct the Bank to accept the settlement and further to direct the respondent Bank not to prosecute the proceedings before the Debts Recovery Tribunal, Jaipur. The learned Single Judge has said that both the writ petitions have been filed under Article 226/227 of the Constitution of India. Further, specific query has been made by the learned Single Judge as to whether the powers can be exercised and matter can be decided finally under Article 226/227 of the Constitution of India by the Single Bench.

The learned Single Judge while passing the order has considered the matter on merits as is clear from the portion of the judgment referred in para 6 by us, whereas judgment delivered by the Debts Recovery Tribunal, Jaipur is not on

merits. The application for compromise was dismissed by the Tribunal only on the ground that the compromise has not been entered into between the parties in accordance with the provisions of Order 23 Rule 3 of the Civil Procedure Code. The learned Single Judge has taken into consideration the Circular No. 3 of 97, the document dated 14th September, 1998 and thereafter while considering the case on merits, reached to the conclusion that the document dated 14th September, 1998 is a document where under (he B.ank and Company have entered into a compromise and, that there was a settlement between the Bank and the Company for the amount of Rs. 4.75 crore and there is nothing left to be adjudicated by the Tribunal. The learned Single Judge issued directions to the Tribunal to pass an appropriate order in accordance with law under Order 23 Rule 3 of the CPC i.e. to record the compromise and to pass a decree in terms thereof as alleged by the respondent Company.

The matter was not remanded back by the learned Single Judge for adjudication of the question by the Tribunal on merits whether on facts and under law any compromise has been arrived at and, if go, for what amount and as to what relief the respondent Company shall be entitled to. The learned single Judge, on appreciation of the material produced on record itself, has arrived at the findings that the compromise for the amount of Rs. 4.75 crore has been arrived at. The only part left with the Tribua<sup>^</sup>lis to pass a decree of the said amount. Thus, in our view, it is obvious that the power has been exercised by the learned Single Judge under Articles 226 and 227 of the Constitution of India while deciding the matter. In our view, the appeal under Ordinance 18 of the Ordinance of 1949 if maintainable. In all eventualities, if we hold mat the order of the Single Judge is in exercise of Article 227 of the Constitution of India then, on our interpretation of Provision 18 of the Ordinance of 1949, intra- Court appeal lies in the High Court; if we hold that the order passed by the Single Judge is in exercise of Article 226/227 of the Constitution of India then also intra-Court appeal lies and, ifit is a case of order being passed under Article 226 of the Constitution of India, appeal under Ordinance 18 of the Ordinance of 1949 is maintainable. For the reasons stated hercinabove, in all eventualities, appeal against the order dated 20.8.1999 of the Single Judge is maintainable under Ordinance 18 of the Ordinance of 1949.

29. For the aforesaid reasons, both the appeals are allowed. The order passed in both the writ petitions by the learned Single Judge on 20th August, 1999 is set aside. The parties are directed to appear before the Debt Recovery Tribunal on 3.10.2001 and the Tribunal is directed to proceed further with the matter on merits and in accordance with law.