

(2014) 07 DEL CK 0264

In the Delhi High Court

Case No : W.P. (C) 8592/2011 and CM. No. 5378/2014

Standard Chartered Bank

APPELLANT

Vs

India Glycols Ltd.

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 22, 23, 24
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 19(2), 19(22)

Citation : (2014) 4 BC 418 : (2015) 213 DLT 246

Hon'ble Judges : Vibhu Bakhru, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Sumit Bansal, Ateev Mathur, Richa Oberoi and Devmani Bansal, Advocate for the Appellant; Rajeev Virmani, Sr. Advocate, Vikas Mehta, Rajat Sehgal and Anindita Mitra, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—This is a writ petition challenging the order of the Debts Recovery Appellate Tribunal (DRAT) dated 22.9.2011 which upholds an order of the Debt Recovery Tribunal (DRT), which found Section 10 of the CPC ("CPC") to be applicable to the DRT proceedings, on account of an earlier proceeding being instituted before the High Court, invoking its original civil jurisdiction.

2. The brief facts are that the petitioner bank and the respondent company (hereafter "the borrower") entered into transactions under which, the latter defaulted on its obligations. The borrower filed a suit before this Court on 27.10.2009 claiming that its transactions with the bank were based on speculative and wagering agreements and thus were unenforceable, illegal and contrary to public policy. It sought injunction against the petitioner bank from enforcing the demand against it (the borrower). This Court refused to grant any ad interim injunction.

3. The petitioner bank later filed an original application before the Debt Recovery

Tribunal u/s 19 of the Recovery of Debts due to Banks and Financial Institutions Act ("Recovery Act"), seeking to enforce a demand for Rs. 19,15,22,110/- with an interest at the rate of 7% p.a. w.e.f. 22.1.2010. The borrower filed a written statement in the proceedings as well as an application u/s 10 of the CPC, seeking a stay of the proceedings in the O.A. The ground urged was that a prior suit had been filed before this Court, involving the same issues, under the same cause title, and between the same parties. The DRT allowed the application on 1.6.2011, and stayed proceedings before it on the ground that a superior forum with jurisdiction should hear the matter. The Bank's appeal from this order was dismissed by the DRAT on 22.9.2011.

4. The order of the DRAT, in relevant part, reads:

12. Keeping in view the aforesaid essence of the matter this has already been considered by the Tribunal that the matter substantially in issue in both the suits with regard to the validity of the documents whether the documents as such have validly been executed and are also valid in the eyes of law. These are the relevant considerations and the matter in issue is directly and substantially is the same in the previously instituted suit and the O.A. which was filed later on and merely because certain matters which are incidental and collateral in issue that will not be decisive [sic] ...

13. On the basis of the aforesaid now the question remains that even assuming that Section 10 as such may not have any application to the proceedings taken up in the RDBFI Act, 1993 but where by virtue of sub-section (1) of Section 22 it is directed that the Tribunal including the Appellate Tribunal shall not be bound by the procedure as contemplated in the CPC but will be guided by the principles of natural justice. As I have held earlier that the object behind Section 10 if it is taken into account and the borrower being defendant before the DRT has already taken steps to file civil suit then under these circumstances the principles of natural justice are to be applied to stay the suit to avoid the conflicting judgments by two courts and also to save the time of the courts to examine the witnesses. The policy behind Section 10 is based upon the public policy.

14. ...Section 10 applies only where, on the final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. In the instant case, the reliefs in the two suits were different and so were the causes of action. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief Applying the said test as I have already held earlier that the judgment in a previous suit with reference to the valid execution of the documents and right of the bank that borrower validly agreed on the basis of such documents and whether the documents are in accordance with law would be the question which is pending before the civil court and the judgment passed by the civil court would have the binding effect on the parties because in both the suits the parties are the same. It may be different condition that after when

the said substantial issues are decided by the civil court the Tribunal may proceed with to ascertain the actual amount or interest thereon and then to enforce the security.

15. Under these circumstances, while applying the principles of natural justice it would be appropriate to stay the suit rather than to permit both the courts to go ahead with the suit and to get the conflicted decisions.

16. The maxim "ex debito justitiae" would be applicable because every Tribunal or court will have the inherent jurisdiction and particularly when such Tribunals are equipped with the power to be guided by the principles of natural justice by virtue of Section 22(1) of the RDBFI Act, 1993, then the power to stay the suit being inherent has to be applied because the Tribunal or any court cannot direct either to the civil court or to a party to get the said suit transferred to DRT for its adjudication wherein later suit or original application is filed. Earlier filed application or suit shall be permitted to go on and the later suit as to wait till the final adjudication of the earlier suit.

5. Aggrieved by this order, the petitioner Bank submits that to invoke Section 10 there are three requirements; firstly, the issue in the previously instituted suit must be directly and substantially in issue in the later matter, secondly, the two Courts must have concurrent jurisdiction in that the Court in which the matter was first filed must have the jurisdiction to grant relief claimed in the second matter and thirdly, the parties must be the same in both the matters. Of these, it is argued that all the requirements are not fulfilled. The Bank argues that the issues in the two matters are very different; the issue before the DRT concerns the enforcement of the debt by the bank while the issue before the civil court is whether the nature of the transaction rendered it illegal. In any event, it is argued, relying on *National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara*, and *Vee Cee Yes Granites Chennai Vs. Central Bank of India*, , that the second requirement is not fulfilled in the instant case as the Civil Court is not competent to hear a bank's plea to enforce the debt, since Section 18 of the Recovery Act excludes the jurisdiction of the civil court in the areas covered by the Recovery Act, and confers exclusive jurisdiction on the DRT. Finally, it is argued that the parties are not the same in the proceedings before the DRT and the Civil Suit before the High Court.

6. Reliance is placed by the petitioner Bank on *Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation*, to argue that Section 10, CPC is only applicable if the later proceedings can be termed "suit" and are filed out in a "Court". Furthermore, the DRT's reliance on *Vakrangee Softwares Limited, Dinesh Nandwana and Mrs. Jyoti Dinesh Nandwana Vs. Central Bank of India, Nariman Point Branch*, , without regard to the Supreme Court's decision, in *Nahar* (supra) it is urged, was not only erroneous but also misguided since *Vakrangee* (supra) turned on the fact that one of the parties in that case had alleged misrepresentation against the other. In any event, DRT proceedings being summary proceedings cannot attract Section 10. To say this, the Bank relies

upon VeeCee Granites (supra) to urge that Section 10 of the CPC does not apply in recovery proceedings instituted under special enactment.

7. On Section 22 of the Recovery Act, the Bank submits that its terms state that the DRT is not bound by the CPC but shall instead be guided by the principles of natural justice. Moreover, it is argued that since Section 10, CPC embodies a substantive rule it cannot be applied u/s 22 of the Recovery Act. Furthermore, it is argued that the CPC can apply in DRT proceedings only to the limited extent prescribed in Section 22(2), which specifies exactly what rules of the CPC apply to the DRT. Finally, it is argued that the DRAT's approach of considering the substance of Section 10 a rule of natural justice on the basis of NIMHANS(supra), was misguided and untenable.

8. The petitioner submits that the practical upshot of the borrower's Section 10 application, once allowed by the DRT, is that an injunction is obtained on the Bank's enforcement of the borrower's debt through the backdoor, since it could not get a stay on enforcement in its injunction plea in the civil suit filed by it on 27.10.2009. If such practice is allowed, says the Bank, any entity seeking to evade the enforcement against it would file a frivolous suit in a civil court to preclude a bank from enforcing the debt in a DRT, which is the exclusive and competent forum. Moreover, proceedings before the DRT ought to have been allowed to continue since it is the forum with the jurisdiction to not only adjudicate and decide on the validity of documents, i.e. the enforceability of the debt but also to quantify the claims for enforcement, unlike the Civil Court which only has the former and not the latter power.

9. The borrower, on the other hand, submits that the order of the DRAT must be confirmed, as the spirit of Section 10 of the CPC resides in the principle of res judicata, which is universal in nature and is to be upheld as a principle of public policy, without regard to technical considerations of form. Placing reliance on M. Nagabhushana Vs. State of Karnataka and Others, , it is argued that the principle applies equally in proceedings before administrative authorities. The respondent further submits that a "suit" is not the only proceeding which attracts application of Section 10, CPC. For this, reliance is placed on Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another, ; Patel Roadways Limited Vs. Birla Yamaha Limited, and Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. and Others, . Finally, the respondent invokes Vakrangee Softwares Limited, Dinesh Nandwana and Mrs. Jyoti Dinesh Nandwana Vs. Central Bank of India, Nariman Point Branch, , to argue that the application of Section 10 by the DRT was approved by the Bombay High Court.

10. The questions that arise for the consideration of this Court are:

a) Does Section 22 of the Recovery Act bar the DRT from invoking Section 10 of the CPC to stay proceedings before it and if not,

b) Whether the matter was directly and substantially in issue before the High Court, under its original civil jurisdiction,

c) Whether the High Court's original civil jurisdiction and the DRT can be considered courts of "concurrent jurisdiction" and whether it is relevant that the DRT be a "Court"?

11. To answer the first question, it would be necessary to excerpt Section 22 of the Recovery Act which provides the extent to which CPC binds the DRT.

Section 22-Procedure and Powers of the Tribunal and the Appellate Tribunal

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

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

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

(3) xxx

12. It must be appreciated that while the DRT is not bound by the CPC under this provision, it is empowered to regulate its procedure, subject to compliance with the rules of natural justice, and the provisions of the Recovery Act and any subordinate legislation under the Act. This implies that the DRT is empowered to use rules of the CPC as part of the procedure to be followed during proceedings, since the discretion to regulate procedure is conferred on the DRT in Section 22(1). This view was accepted in *The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others*, and affirmed in *Allahabad Bank, Calcutta Vs. Radha Krishna Maity and Others*, . The Court observed in *Grapco Industries* in these terms:

When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid by the Code of Civil Procedure, it does not, mean that it will not have jurisdiction to exercise powers of a Court as contained in the Code of Civil Procedure, Rather, the Tribunal can travel beyond the CPC and the only fetter that is put on its powers is to observe the principles of natural justice.

Thus, as the DRT is empowered to regulate its own procedure, it is not foreclosed from applying Section 10 of the CPC in proceedings before it, and the argument that the DRT is not bound by the CPC u/s 22 of the Recovery Act is meritless in this context.

13. To answer the second question, it would be apposite to excerpt Section 10 of the CPC:

Section 10 -Stay of suit

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government 3[***] and having like jurisdiction, or before the Supreme Court.

Explanation.-xxx

14. Section 10 requires that first, the matter in issue in the later proceedings must also be directly and substantially in issue in the first suit, second, the earlier suit must be between the same parties litigating under the same cause title, third, the earlier suit must be pending in a Court having jurisdiction to grant the relief claimed in the later suit. To determine whether the matter in issue in the later proceedings is also directly and substantially in issue in the earlier proceedings, it must be seen whether final decision in respect of the earlier proceedings will act as res judicata in the later proceedings. See NIMHANS (supra). In other words, it must be determined whether the decision in one would non-suit the other.

15. This question may be answered briefly. The suit documents reveal that the plaintiff in the suit i.e. the borrower in this writ petition had sought to hedge risk against fluctuation in the currency exchange rate of US \$ against the Indian Rupee. The defendants in the suit were the bank and its representative had proposed to the borrower to enter into derivative transactions, as it would cover and hedge its exchange fluctuation risk. The documents were to be prepared in standard form, though the plaint avers that the "...standard format was not made known to the plaintiff"; yet the borrower allegedly relied on the representations of the bank. The borrower claimed that the defendant Bank knew of its dependence on the latter's knowledge and expertise in the area of these complex contracts. It is averred that, subsequently, the senior management of

the borrower discovered that these derivative transactions were contrary to RBI circulars and guidelines, and were merely speculative transactions. On this ground, the plaintiff/respondent moved the High Court, through a civil suit, claiming that these derivative contracts were void ab initio and unenforceable, and that the defendant/writ petitioner had fraudulently obtained consent on these transactions from the plaintiff.

16. The DRT, if it were to proceed to order recovery of the debt, would necessarily need to determine whether the contracts in question are enforceable to begin with, provided it is urged in the written statement or defence. The right to do so is preserved by way of counter claim, u/s 19(8) of the Recovery Act. Clearly then, the enforceability of the documents in the later proceedings can also directly and substantially in issue in the earlier proceedings, i.e. in the civil suit in which the borrower challenge the validity and enforceability of the transactions entered into. However, the final decision in the earlier proceedings will not act as *res judicata* in respect of the later proceedings. One need not go far to seek the reason for this. The earlier proceedings before the civil court are only capable of answering the limited question of whether the derivative contracts are enforceable, and nothing beyond. The civil court cannot go ahead and enforce those documents, since the DRT has exclusive jurisdiction to do so under Sections 17 and 18 of the Recovery Act, as discussed later. Thus, it is clear that a decision in the earlier proceedings will not act as *res-judicata* in the later proceedings and consequently, this requirement is not fulfilled.

17. To answer the final question, the requirement of concurrent jurisdiction of the two fora cannot be considered to be fulfilled if the Court before which the later suit is pending possesses the jurisdiction to grant the relief claimed in the earlier suit. This is to be understood in light of the principle behind Section 10 which is to ensure that two courts with concurrent jurisdictions do not record conflicting findings in respect of two matters in which the same issues are directly and substantially in issue. The intent is to avoid multiplicity of proceedings, in that a final finding in the earlier proceedings ought not to act as *res judicata* in the later proceeding. (Ref. Pukhraj D. Jain and Others Vs. G. Gopalakrishna, , and NIMHANS (supra)). It is evident from the text of Section 10 that if its requirements are fulfilled, then the Court before which the later suit was filed is required not to proceed with the trial of the suit. Thus, it is only later suit that will be susceptible to a stay u/s 10.

18. This Court need not labour to discern that Sections 17 and 18 of the Recovery Act excludes jurisdiction of the civil Court to grant the relief sought in the original application before the DRT. While Section 17 confers jurisdiction on the DRT to enforce the debt owed to the bank, Section 18 confers this jurisdiction exclusively upon the DRT and expressly bars jurisdiction of other Courts. Thus, it is evident from a plain reading of the statute that the Court in which the suit was first filed is not competent to grant the relief sought in the later proceedings. Therefore, this Court finds that the proceedings before the

DRT cannot to be stayed u/s 10.

19. There is another feature to be noticed in this matter. If the DRT proceedings are not stayed, it will in effect be attempting to give effect to documents, whose enforceability itself is under a cloud before the civil Court, in proceedings that are on-going there in parallel. Equally, it is likely that the DRT, during proceeding in the original application of the bank, will hear the debtor company on the matter of enforceability of these derivative contracts. It becomes evident that before the DRT seeks to enforce the debt, in order for it to be able to do so, it is imperative that the question before the civil Court be answered, either by the civil Court or by the DRT itself. However, it is also evident from an understanding of Section 10, CPC, that the earlier proceedings cannot be stayed in order to avoid multiplicity of proceedings.

20. In this light, this Court is constrained to point out that an alternative course of action is available to the borrower in this case. The decision in *Indian Bank Vs. ABS Marine Products Pvt. Ltd.*, , built on and clarified the decision in *United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others*, . The latter case was concerned with the question of whether a suit by a bank would automatically be transferred to the DRT, given that the Recovery Act was brought into force during the pendency of the bank's suit. The controversy in the case was whether remand by the appellate Court to the trial Court, which had disposed of the bank's suit on 29.03.1994, would revive it so as to render the suit pending as of the date the Recovery Act i.e. 27.04.1994 entered into force. Thus, the Court ordered that the bank's suit would stand transferred to the DRT. During these proceedings, the debtor company argued that the issues in its suit against the bank for specific performance and perpetual, mandatory injunctions were "integrally connected" to the issues in the bank's suit, and since the DRT lacked the power to hear its specific performance suit, the bank's suit ought not to be transferred to the DRT. In this context, the Court held that since the company's claims were all inextricably connected with the claims of the bank in its suit, in its substance was in the nature of a counter-claim to the bank's suit. Consequently, the Court ordered that this suit must also be transferred to the DRT. The Court, however, also observed that the decision in respect of the debtor's suit was necessitated only because of the claim of the debtor company, despite there being no claim for transfer of the debtor's suit by either of the parties.

21. In *Indian Bank (supra)*, the bank, relying on sub-sections (6) to (11) of Section 19 and *Abhijit Tea Co. (supra)*, had appealed against an order of the High Court denying them the transfer of the debtor company's suit to the DRT, where the bank's original application was pending. The bank argued that the subject matter of the bank's application was "inextricably connected" to that of the debtor's suit, due to which the latter ought to be considered as a counter-claim in the bank's application and transferred to the DRT. While the Court found that there was no connection between the issues in the suit and the original

application, the Court held, given that sub-sections (6)-(11) of Section 19 were merely enabling provisions, that there was no provision in the Recovery Act mandating transfer of proceedings in such a scenario; Section 31 though mandated transfer, was patently inapplicable in these circumstances. The Court sought to clarify Abhijit Tea Co.'s incidental ruling on transfer of a debtor's suit to the DRT by requiring that two conditions be met: first, the subject matter in the debtor's suit was inextricably linked to the bank's application before the DRT and second, that both parties should consent to the transfer.

22. It is clear that this test is two-fold: while the second requirement is a pre-requisite for exercise of the power of transfer, the first is concerned with whether the transferred matter can be treated as a counter-claim. Indian Bank (*supra*) and Abhijit Tea (*supra*) held that the test to determine whether the matters are inextricably connected is whether the decision in one matter affects the decision in the other. In the context of the DRT, this test must be satisfied keeping in mind the foundational understanding of the extent to which a counter-claim can be advanced as a defence. This was enunciated in these terms in *Williams Brothers v. ED. T. Agius, Limited*, [1914] A.C. 510, 521-522:

Now, how far counter-claim is available as defence is truly a matter of pleading. Different systems of law vary as to this power, and the same system of law will be found to vary at different dates of its development. But this at least is certain, that no counter-claim can be given effect to as a defence unless the Court dealing with the original action has also jurisdiction in the matter of the counter-claim.

[emphasis added]

Since the proceedings before the High Court on the issue of enforceability of the derivative transactions are inextricably connected to the proceedings before the DRT on the recovery of debt owed to the bank, the DRT most certainly possesses the jurisdiction to hear the matter in issue before the High Court. Thus, this Court finds that the respondent/plaintiff can apply to the requisite forum seeking a transfer of the civil Court proceedings to the DRT, in the form of a counterclaim, in order to avoid the possibility of the DRT proceeding to record a conflicting finding, from that of the High Court.

23. The writ petitioner argues that the decision in *Nahar* (*supra*) has categorically held that the DRT is not a "Court", and thus Section 10 must be found to be inapplicable. The facts before the Court in this case were that, just as in this case, the appellant had entered into derivative transactions with the respondent bank, and the former had filed a civil suit in Ludhiana seeking a declaration that these contracts were void as they were contrary to the Foreign Exchange Management Act, 1999 and circulars and guidelines of the RBI. The civil judge had granted an order directing the parties to maintain status quo. The respondents subsequently terminated the derivative transactions and also applied to the DRT, III, Mumbai claiming recovery of dues. In the O.A., the DRT

restrained the appellant company from alienating or creating third party interests in its fixed assets in relation to transactions that were unrelated to the suit. The respondent bank subsequently applied to the High Court of Punjab seeking a transfer of proceedings before the civil Court, Ludhiana to the DRT, Mumbai; the application was allowed and the suit was transferred to the DRT as a counter-claim. The banks and financial institutions in all the attached matters also filed transfer petitions before the Supreme Court u/s 25 of the CPC. The question that called for decision thus, was whether the High Court/Supreme Court had the power to transfer a civil suit to the DRT, given that the DRT could not be considered a "civil Court" or a "Court subordinate to the High Court" for the purpose of exercise of transfer power under Sections 22-25, CPC.

24. The Court in Nahar considered Indian Bank (supra) and State Bank of India Vs. Ranjan Chemicals Ltd. and Another, . The emphasis in both those cases was on the requirements that needed to be fulfilled for the issues in the civil suit to be transferable as a counter claim to the DRT. Indian Bank (supra) held, building on Abhijit Tea Co. (supra), as discussed earlier, that a transfer is merited if, first, the issues in the civil suit are inextricably connected to the recovery of dues sought in the Original Application before the DRT, in that the decision in one case would affect the decision in the other, and second, both parties consent to the civil suit being considered a counter-claim before the DRT. Ranjan Chemicals (supra), however, held that a claim in the civil suit can be maintained as a counter-claim before the DRT even if it does not arise out of the same cause of action as before the DRT, and that a joint trial is merited if a Court finds that it would "avoid separate overlapping evidence being taken in the two causes". The Court in Ranjan Chemicals (supra), therefore, held that there was no basis on which the transfer powers of the Supreme Court/High Court could be curtailed, as the transfer power was an inherent power vested in them. However, the Court in Nahar (supra) found that Indian Bank (supra) and Ranjan Chemicals (supra) sidestepped the main question of whether transfer itself was permissible, in these terms:

56. We are not here concerned with the question whether the civil suit filed by a debtor should be read as a counterclaim for the purpose of exercising jurisdiction u/s 25 of the Code as in effect and substance we are concerned with the jurisdiction of this Court to pass an order of transfer.

It was thus observed in Nahar (supra) that the question of whether the a civil suit filed by a debtor can be considered a counter claim for the purpose of the exercise of the power of transfer, would not even arise if the High Court/Supreme Court had no jurisdiction to pass an order of transfer under Sections 22-25 of the CPC.

25. The Court then went on to hold that all civil Court proceeding cannot be transferred to the DRT, regardless of whether they are "inextricably connected" with the application before the DRT or not, as it would amount to an indirect ouster of jurisdiction of the civil Court. The Court reasoned that the Recovery Act

only ousts the jurisdiction of the civil Court to the extent indicated in Section 18, read together with Section 17 of the Act. Since Section 17 confers jurisdiction on a DRT to order a recovery of debt due to a bank/financial institution and Section 18 confers this jurisdiction exclusively upon the DRT, in light of Section 9 of the CPC, it follows that the civil Court's jurisdiction is not ousted in respect of issues falling outside the ambit of Section 17. It was in this context that it was held that a tribunal is not a "civil Court", and that the tribunal consequently possesses a comparatively limited jurisdiction. Therefore, complete ouster of civil Court jurisdiction by exercise of the transfer powers would be impermissible. To quote:

85. If the Tribunal was to be treated to be a civil court, the debtor or even a third party must have an independent right to approach it without having to wait for the Bank or Financial Institution to approach it first. The continuance of its counter-claim is entirely dependent on the continuance of the applications filed by the Bank. Before it no declaratory relief can be sought for by the debtor. It is true that claim for damages would be maintainable but the same have been provided by way of extending the right of counter-claim.

86. Debt Recovery Tribunal cannot pass a decree. It can issue only recovery certificates. [See Sections 19(2) and 19(22) of the Act]. The power of the Tribunal to grant interim order is attenuated with circumspection. See *Dataware Design Labs (P) Ltd. Vs. State Bank of India*, . Concededly in the proceeding before the Debt Recovery Tribunal detailed examination; cross-examinations, provisions of the Evidence Act as also application of other provisions of the CPC like interrogatories, discoveries of documents and admission need not be gone into. Taking recourse to such proceedings would be an exception. Entire focus of the proceedings before the Debt Recovery Tribunal centers round the legally recoverable dues of the bank

88. We have noticed hereinbefore that Civil Courts are created under different Acts. They have their own hierarchy. They necessarily are subordinate to the High Court. The appeals from their judgment will lie before a superior court. The High Court is entitled to exercise its power of revision as also superintendence over the said courts. For the aforementioned purpose, we must bear in mind the distinction between two types of courts, viz., civil courts and the courts trying disputes of civil nature. Only because a court or a tribunal is entitled to determine an issue involving civil nature, the same by itself would not lead to the conclusion that it is a civil court. For the said purpose, as noticed hereinbefore, a legal fiction is required to be created before it would have all attributes of a civil court.

89. The Tribunal could have been treated to be a civil court provided it could pass a decree and it had all the attributes of a civil court including undertaking of a full-fledged trial in terms of the provisions of the CPC and/or the Evidence Act. It is now trite law that jurisdiction of a court must be determined having regard to the purpose and object of the Act. If the Parliament, keeping in view the purpose and object thereof thought it fit to create separate tribunal so as to enable the

banks and the financial institutions to recover the debts expeditiously wherefor the provisions contained in the CPC as also the Evidence Act need not necessarily be resorted to, in our opinion, by taking recourse to the doctrine of purposive construction, another jurisdiction cannot be conferred upon it so as to enable this Court to transfer the case from the civil court to a tribunal.

[emphasis added]

26. The Court nowhere suggested that the DRT is not a "court" so as to bar the applicability of Section 10. Paragraph 92 of Nahar (supra) merely states that the tribunal is neither a "civil court" nor a "court subordinate to the High Court" for the purpose of Section 23 of the CPC. Paragraph 98 reiterates the same conclusion.

27. Likewise, the petitioner submits that proceedings before the DRT cannot be considered a "suit". Without going into the meaning of the term "suit", this Court finds that the principle of Section 10 is to avoid multiplicity of proceedings and conflicting findings being recorded by two fora that are equally competent to hear the issues. In this light, technical arguments like whether a proceeding can be termed a "suit" or not cannot be determinative of the dispute. In the present case, the following observations in Nagabhushana (supra) ought to be kept in mind in this regard:

14. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, "interest reipublicae ut sit finis litium " which means that it is in the interest of the State that there should be an end to litigation and the other principle is "nemodebet his veari, siconstet curiae quod sit pro un aeteademn cause" meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

15. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation.

28. The writ petitioner bank in this case had no doubt filed its claim before the DRT after the suit preferred before this court. If the DRAT's reasoning were to be affirmed, a piquant situation would be permitted where a Tribunal, exclusively created by Parliament to decide recovery claims by public banks, would have to

await decisions of civil courts, instituted by defaulting debtors who might or might not set up the plea of unenforceability of the underlying transaction with their bank/creditors thus frustrating Parliamentary intention at quick dispute resolution of such matters. The public purpose underlying the creation of exclusive Tribunals would thus be easily achieved by the possibility of a potential conflict in decisions. Such a sweeping result cannot be plainly countenanced. The petition, for the above reasons is allowed, with no order as to costs.