

(2013) 03 CAL CK 0065
In the Calcutta High Court
Case No : C.O. No. 4051 of 2012

Sutapa Chatterjee and Another

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 47 Rule 1, 114
Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 11, 17, 17(2), 18, 19

Citation : (2013) 4 BC 252 : (2013) 2 CALLT 272 : (2013) 4 CHN 270 : (2013) 3 WBLR 965

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Rupak Ghose, Mr. S. Dewanji and Mr. D. Deb, for the Appellant; Siddhartho Chatterjee and Mr. Uday Goswami for the Opposite Party No. 1, for the Respondent

Final Decision : Allowed

Judgement

Sanjib Banerjee, J.—The legal issue that has arisen is whether the requirement of a pre-deposit to prefer an appeal as recognised in section 21 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 has to be met in case of every appeal u/s 20 of the Act from every order passed by any Debts Recovery Tribunal if the appellant were a person against whom a money claim is made by a bank or a financial institution or a consortium of banks or financial institutions under the said Act. The matter is of some importance since the answer to the question may have the undesirable effect of opening the floodgates for any or every order of a Debts Recovery Tribunal to be subjected to a frivolous appeal with the oblique motive of stalling the adjudicatory and recovery proceedings before the tribunal. The facts of the present matter are not of much consequence in the context of the legal issue, but need to be noticed only for the purpose of appreciating the circumstances in which the present

question arises. The opposite party No. 1 bank instituted proceedings u/s 19 of the said Act before a Debts Recovery Tribunal in Kolkata against, inter alia, the petitioners herein. Upon the matter ripening for trial, the petitioners herein applied before the tribunal seeking permission to cross-examine the bank's witness. From the rejection of such application by the tribunal, the petitioners herein sought to prefer an appeal and, for such purpose, applied before the appellate tribunal for waiver of the pre-deposit u/s 21 of the Act. The petitioners insist that such application was required to be filed in keeping with the practice of the appellate tribunal. The appellate tribunal allowed the application by requiring a sum of Rs. 3 lakh to be deposited as the condition precedent for entertaining the appeal. A previous petition under Article 227 of the Constitution of India was carried from the appellate order of pre-deposit passed on September 7, 2012. During the pendency of such previous petition, the appellate tribunal accommodated the petitioners on a couple of occasions, but by the order of October 16, 2012 declined to entertain the appeal for the non-compliance of the order for predeposit. Both the orders of September 7, 2012 and October 16, 2012 have been assailed in the present proceedings.

2. In the order of September 7, 2012 the appellate tribunal recognised the circumstances in which the appeal was sought to be preferred and noticed that the bank's claim had not been finally adjudicated upon. The appellate tribunal recorded the bank's submission that out of the bank's claim of Rs. 29 lakh an amount in excess of Rs. 22 lakh was "virtually admitted as due" by the constituents. The appellate tribunal thereafter held as follows:

The appellant is undoubtedly a person from whom, according to the respondent-bank, there is an amount of Rs. 29 lacs due. As earlier pointed out, this is not the right stage for this Tribunal to appreciate the various points as raised on behalf of the parties. There is also perhaps no escape and present applicant/appellant is certainly under obligation to make pre-deposit u/s 21 of the DRT Act.

Of course, this Tribunal can waive or reduce the aforesaid amount. Considering all the facts and circumstances, I think interest of justice will be best served if the present application u/s 21 of the DRT Act is disposed of with direction upon the applicant/appellant to deposit an amount of Rs. 3 lacs by way of pre-deposit and the same must be made by 25th of September, 2012. In default, the appeal cannot be entertained.

Before the legal position on the issue that has arisen is ascertained, it is necessary, at the outset, that the relevant provisions of the statute be noticed:

2. Definitions.--

....

(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the

bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;

....

17. Jurisdiction, powers and authority of Tribunals.--

....

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

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

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

....

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

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

3. The petitioners contend that any order made, or deemed to have been made, by a tribunal under the said Act is appealable to the appellate tribunal u/s 20 thereof, save orders made by a tribunal with the consent of the parties. The petitioners say that section 21 of the Act is restricted in its application and the pre-deposit contemplated thereunder would not govern every appeal u/s 20 of the Act lodged by a respondent to the proceedings u/s 19 of the Act. It is the petitioners' suggestion that only upon a person being adjudged to be indebted to a bank by the tribunal that such person is required to make a deposit of 75% of the debt adjudged to be due on preferring an appeal from the order adjudging the debt to be due. The petitioners claim that the plain words of section 21 of the Act admit of no other construction of the provision and an erroneous practice is in vogue in the appellate tribunal in Kolkata which is harsh and burdensome to constituents of banks and financial institutions and utterly illegal.

4. The petitioners rely on a judgment reported at M/s. Gemini Arts Pvt. Ltd. Vs. Indian Bank and 4 others, where a single Judge of the Madras High Court held that interlocutory orders passed by a Debts Recovery Tribunal are appealable u/s 20 of the Act. The discussion in the judgment throws some light on the matter in issue herein, but such discussion was in the context of distinguishing a Single Bench judgment of this court reported at M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others, and a part of the view expressed may be regarded as obiter dictum since the issue that is germane in the present proceedings did not arise in the Madras case. The petitioners have also relied on a Single Bench judgment of this Court reported at Jenson and Nicholson (India) Ltd. Vs. Industrial Investment Bank of India and Others, which considered the previous Single Bench view of this court in Pratap Ch. Dey but opined that the decision therein "overlooked a very relevant specific provision contained in section 17(2) of the Act." Again, the judgment in Jenson & Nicholson (India) Ltd. is relevant to the issue that has arisen now only to a limited extent and does not completely cover the present matter.

5. The bank asserts that it is not open to the petitioners herein to question the propriety of the orders impugned, particularly since the petitioners applied for waiver of the pre-deposit; and, implicit in the petitioners making such application was their acceptance of the requirement to make a pre-deposit for the appeal to be entertained. The bank submits that the error of the appellate tribunal that the petitioners complain of is capable of correction in review u/s 22(2)(e) of the Act; and the petitioners must be required to exhaust such remedy before being permitted to invoke the extraordinary supervisory jurisdiction of a High Court under Article 227 of the Constitution.

6. Since the petitioners question the very authority of the appellate tribunal to hedge a statutory right with a condition not recognised by the statute, the bogey of an efficacious alternative remedy raised by the bank is of no merit. In any event, it does not appear that either order impugned herein is capable of being revisited u/s 22(2)(e) of the said Act as the perceived mistake is that of an interpretation of law and not some mistake or error apparent on the face of the record, section 22(2)(e) of the Act extends the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 to tribunals and appellate tribunals constituted under the said Act, inter alia, in respect of review of decisions. The provision for review is found in section 114 of the Code and in Order XLVII thereof, section 114 merely indicates who may seek review of a judgment, but it is Order XLVII of the Code that prescribes the parameters for seeking a review. Since the residuary clause of Order XLVII Rule 1 of the Code--"or for any other sufficient reason"--is to be read ejusdem generis with the two limbs for review that precede it, an erroneous interpretation of a provision, which may not be a patent error of law, may not be capable of being subjected to a review.

7. In Pratap Ch. Dey the question that was formulated by this Court on a petition

under Article 227 of the Constitution was whether a tribunal constituted under the said Act of 1993 ought to decide an issue of jurisdiction as a preliminary Issue first before deciding the other issues or whether it ought to decide such issue along with the others at the time of final disposal. An objection was taken in this court on behalf of the bank as to the maintainability of the petition under Article 227 of the Constitution. Such objection was founded on section 20 of the said Act. The court held that in view of section 18 of the Act that specifically preserves the authority of the High Courts exercising jurisdiction under Article 226 and 227 of the Constitution, "it can be safely said that even if an appeal lies against an order of the Bank Recovery Tribunal under the Act itself, in an appropriate case, the High Court still retains its jurisdiction to entertain a petition either under Article 226 or 227 of the Constitution which is moved against an order of the Bank Recovery Tribunal," Indeed, such part of the judgment is beyond question as Article 226 and Article 227 constitute a basic feature of the Constitution that can scarcely be tinkered with.

8. The judgment thereafter considered the bank's objection, not on the ground of maintainability but on the diluted ground of the desirability of receiving a petition when an appeal lay. In such context, the Single Bench held as follows at paragraph 5 of the report:

5. ...That apart, in my view, section 20 of the Act of 1993 contemplates an appeal to be filed against any final order passed by the Tribunal. It is true that in section 20 of the Act of 1993 it has been said that any person aggrieved, by an order made by the Tribunal may prefer an appeal to the Appellate Tribunal. Mr. Mitra relying on the word "an order" as used in section 20 of the Act submitted that any order that would be passed by the tribunal was appealable u/s 20 of the Act. In my view, considering the object and scheme of the Act and the relevant provisions of the Act it cannot be held that any order that would be passed by the tribunal would be appealable u/s 20 of the Act. It was rightly argued by Mr. Roychoudhury appearing on behalf of the petitioners, that the provision for appeal shall be applicable only in case a final order is passed by the tribunal. If we read the provisions in Chapter IV of the said Act of 1993 along with sections 17 and 18 of the Act it would be evident that the word "an order" used in section 20 of the Act of 1993 relates to a final order passed by the tribunal in a proceeding u/s 19 of the Act of 1993. Chapter IV deals with procedure of tribunals and disposal of the applications filed before the tribunal. Section 19(4) of the said Act of 1993 contemplates final order to be passed on the application to the tribunal. Section 21 requires deposits of amount of debt due on filing an appeal. It clearly says that where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the appellate tribunal unless such person has deposited with the appellate tribunal 75% of the amount of debt so due from him as determined by the tribunal u/s 19 of the Act. From a plain reading of section 21 of the said Act of 1993 it is clear that an appeal is to be preferred by any person from whom the

amount of debt is due to a bank or Financial institution that is to say on disposal of the applications u/s 19 of the Act, the bank recovery tribunal determines the amount of debt which is payable to the bank or Financial institution by the loanee. Secondly, such appeal cannot be entertained by the appellate tribunal unless such person has deposited in the appellate tribunal 75% of the amount of debt so due from him as determined by the tribunal u/s 19. From this it is also clear that until and unless a final order on the application u/s 19 of the Act is passed, the question of determination of dues payable by the loanee cannot arise at all. Thirdly the section itself is very clear because it has clearly stated that the amount of debt so due from a loanee is determined by the tribunal u/s 19 of the Act. Therefore, in my view, the appeal u/s 20 of the Act shall be filed only against a final order of the bank recovery tribunal and not against any order that may be passed by it.... From a careful reading of the scheme and provisions of the Act there is no difficulty in coming to a conclusion that the plain literal interpretation of the statutory provision in section 20 of the Act produces a manifestly unjust result which could never have been intended by the legislature. Therefore, it is open to the Court to modify and interpret the language used by the legislature so as to achieve the intention of the legislature and produce a rational constitution (See Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri, In this view of the matter also I am of the firm opinion that the word "an order" as used in S. 20 of the said Act of 1993 shall mean any final order passed by the Tribunal.

9. In *Pratap Ch. Dey* this court held that the apparent amenability of every order made, or deemed to have been made, by the Debts Recovery Tribunal to an appeal had to be read down in the context of the legislation to bring about an element of rationalisation. It must be kept in mind that prior to the said Act of 1993, and the ordinance of the same import that preceded it, claims that are now carried to a Debts Recovery Tribunal were lodged in civil courts. Not every order passed by a civil court in a claim by a bank or the like could have been subjected to an appeal, since the right of appeal is a creature of statute; and only such orders made in bank and like claims that are recognised as appealable under the Code of Civil Procedure, 1908 could be carried in appeal. The recognition of such fact appears to have been the underlying motivation for *Pratap Ch. Dey* restricting the scope of appeal under the said Act of 1993 in the manner that it did. There appear to have been two apparently conflicting principles at play and *Pratap Ch. Dey* reconciled the perceived anomaly by reading down the plain words of the statute and by seeking to further the object of the legislation thereby.

10. The view in *Pratap Ch. Dey* was dissented from in the Single Bench Judgment of the Madras High Court in *Gemini Arts Private Limited*. The Madras decision was rendered on a clutch of petitions wherein interim orders passed by the Debts Recovery Tribunals were challenged and, in one of the petitions, the validity of the Act was assailed on the ground of it being ultra vires the Constitution and beyond the legislative competence of the Parliament. At the time that the

judgment was delivered, the Delhi High Court pronouncement that the said Act was unconstitutional was pending consideration before the Supreme Court and the functioning of Debts Recovery Tribunals was under an interim order of the Supreme Court. In the light of the Supreme Court direction, the Madras High Court considered it unnecessary to deal with the challenge to the validity of the Act and only considered the propriety of the interim orders of the Debts Recovery Tribunals that had been assailed before it. It was in such context that the court explored whether the interim orders impugned before it were amenable to appeal u/s 20 of the Act. The dictum in Pratap Ch. Dey came to be considered in such circumstances. The Madras High Court disagreed with the Calcutta view. The relevant discussion is at pages 350-351 of the report:

As regards whether the appellate remedy u/s 20 of the Act would apply to interim orders passed by the Tribunal, on a plain reading of section 20 of the Act, as extracted above, I am inclined to hold that the provision is all pervasive and there is absolutely no indication to assume or to import any restricted meaning to the expression "by an order made, or deemed to have been made, by a Tribunal under this Act". Learned counsel for the petitioners relied on a judgment of the Calcutta High Court in M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others, , which is a decision rendered in the context of the very provision under consideration. With due respect, I am unable to agree with the view expressed by the learned judge of the Calcutta High Court that section 20 of the Act shall be applicable only to final orders and not interlocutory orders. The only tangible reason given by the learned judge in paragraph No. 5 of the judgment in which he deals with the said issue, is based on the requirement of deposit of the amount of debt due on filing the appeal as contemplated u/s 21 of the Act. Section 21 of the Act states that an appeal shall not be entertained unless the appellant "has deposited with the Appellate Tribunal 75 per cent. of the amount of debt so due from him as determined by the Tribunal u/s 19. Therefore, according to the learned judge, an order which has not determined the amount of debt, cannot be a subject matter of any appeal before the Appellate Tribunal. The said reasoning completely overlooks that the requirement u/s 21 would apply only to orders where the debt is "determined" by the Tribunal and not to other types of orders. If the Legislature was inclined to restrict the scope of the appeal before the Appellate Tribunal, it would have said so, u/s 20 of the Act itself to the effect that any person aggrieved by an order determining the amount of debt as due from him may prefer an appeal. But section 20 of the Act is contemplated as against "an order made, or deemed to have been made by a Tribunal under the Act". There is no justification to give a restricted meaning to the said expression. It is not as though the Tribunal is entitled to pass only a final order u/s 19 of the Act. Section 19(6) of the Act empowers the Tribunal to pass interim orders and there is no reason to exclude such interim orders from the scope of section 20 of the Act. Therefore, the requirement to deposit the "determined" amount while filing the appeal would arise only in appeal against final orders and not in other appeals against orders" u/s 19(6) of the Act. A

perusal of the latter part of paragraph No. 5 of the judgment in which the learned judge has dealt with the issue also shows that the learned judge was carried away by the fact that even otherwise u/s 18 of the Act, the jurisdiction of the High Court under articles 226 and 227 of the Constitution of India was kept intact. I am afraid that the said reasoning cannot lead to the interpretation or inference that the interlocutory orders are not appealable. Therefore, I am of the view that the interlocutory orders are also appealable u/s 20 of the Act.

11. In the later judgment of this Court of Jenson & Nicholson (India) Ltd. the propriety of an order passed by an appellate tribunal, to the effect that an appeal u/s 20 of the said Act lay only against a final order passed by the Debts Recovery Tribunal on a petition u/s 19 of the Act, was sought to be questioned. The judgment in Pratap Ch. Dey was noticed and it was held, in effect, that the dictum in Pratap Ch. Dey was per inquirium. Paragraph 14 of the report is relevant for the present purpose:

The aforesaid provisions make it abundantly clear that an Appellate Tribunal from the appointed day is entitled to entertain "appeals" against "any order made" or deemed to have been made by a Tribunal under this Act. Thus, there is no scope of interpreting the words "an order" appearing in section 20 of the Act as only "final order" and not as "any order". Even in sub-section (2) of section 20, only bar created for entertaining an appeal against order made by Tribunal is the order passed with the consent of parties. Therefore, if sections 17(2) and 20 of the Act are read together there is no scope of ambiguity that appeals lie before learned Appellate Tribunal against "any order" passed by Tribunal except a consent order. His Lordship overlooked the phrase "appeals against any order made" appearing in section 17(2) of the Act as quoted above and thus I am unable to treat the aforesaid decision passed by His Lordship as a precedent.

12. The Judgment also recorded that the Madras High Court, the Punjab and Haryana High Court, the Gujarat High Court and the Patna High Court had also taken the view that an appeal u/s 20 of the said Act would lie not only against final orders but also against interlocutory orders.

13. Though the parties have not referred to one aspect of the matter in any great detail, they have not ignored it altogether. The doubt raised is whether a single Judge of this court could disregard a view taken on a legal question in a previous judgment delivered by another single Judge and render a contrary opinion. Though the doctrine of stare decisis may not be applicable in the interpretation of a statute of recent vintage, it cannot be lost sight of that judicial discipline and propriety demand that a previous judgment of a Bench of coordinate jurisdiction of the same High Court cannot be disregarded as certainty, rather than correctness, is the more cherished objective of the judiciary. In a recent judgment reported at Texmaco Ltd. Vs. Tirupati Buildstates Pvt. Ltd., it was observed as follows at paragraph 4 of the report:

4. Before any discussion can be attempted on the legal proposition as to whether

section 42 of the 1996 Act would have any bearing on a request u/s 11 of that Act to a Chief Justice or his designate, some fundamental rules as to judicial propriety need to be established. The discussion must be prefaced with a note that certainty and consistency are at the root of a mature judicial system. A legal pronouncement of a superior forum, in our hierarchical structure, when cited before an inferior forum is binding on the inferior forum, subject to the condition that the authority of the superior forum is not per inquirium. The expression "per inquirium," in the context of a judicial opinion, literally implies that a judgment has been rendered in ignorance of law. A judgment can be said to have been rendered in ignorance of the law and, therefore, having no binding value, if such judgment is contrary to any statute or it is contrary to the judgment of a superior forum. If a judgment of a Division Bench is placed before a single Judge of the same High Court, then the law recognised in such judgment is binding for all practical purposes unless the judgment is patently contrary to the applicable statute or it is contrary to a Supreme Court judgment. If, however, the Division Bench judgment notices a Supreme Court judgment and reads a legal issue discussed in the Supreme Court judgment to imply something that the Supreme Court decision clearly does not say, it is such interpretation which is binding on the single Judge of the same High Court and the single Judge has no room to interpret the Supreme Court judgment in any natural or ordinary way other than as read by the Division Bench. If a Single Bench judgment of a High Court on a point of law is cited before a subsequent Single Bench of the same Court, it is binding on the later Single Bench. The only recourse that the subsequent Judge may have, if he does not agree with the previous opinion, is to refer the matter to a larger Bench. The case is similar if a Division Bench judgment is cited before a subsequent Division Bench of the same Court and the subsequent Division Bench does not agree with the view expressed in the previous one.

14. Ordinarily, the subsequent view taken by a Bench of coordinate jurisdiction of the same High Court has to be ignored if it is in conflict with the view expressed on a legal issue by a Bench of equal status. The only exception may be if the previous view of a Bench of coordinate strength is per inquirium. Implicit in the finding in *Jenson & Nicholson (India) Ltd.*--that the previous single Bench "overlooked the phrase "appeals against any order made" appearing in section 17(2) of the Act"--is the recognition that the dictum in *Pratap Ch. Dey* was per inquirium. Once a previous Bench of coordinate jurisdiction of the same High Court finds an earlier view to be per inquirium, it is such finding that is binding on a subsequent Bench of equal status. It is in such circumstances that it has to be held at this stage that interlocutory orders passed by Debts Recovery Tribunals are appealable u/s 20 of the Act. In any event, it also appears that such view is the more appropriate reading of section 20 of the said Act than how the provision was interpreted in *Pratap Ch. Dey*.

15. Now that the legal position is established as far as this court is concerned that interlocutory orders passed by Debts Recovery Tribunals are amenable to appeal u/s 20 of the said Act by virtue of the expressions "against any order

made, or deemed to have been made, by a Tribunal under this Act" and "by an order made or deemed to have been made, by a Tribunal under this Act (save a consent order)" in section 17(2) and section 20, respectively, of the said Act--it is now to be seen whether there is any requirement of a pre-deposit by any respondent to a petition u/s 19 of the said Act if such person were to prefer an appeal from any order of the Debts Recovery Tribunal. Section 21 of the Act uses the expression "by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions. "The word "debt" is defined in section 2(g) of the Act and, loosely, means "any liability which is claimed as due from any person by a bank or financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the banks or the financial institutions or the consortium under any law for the time being in force... and legally recoverable on the date of the application." The word "application" refers to a petition u/s 19 of the said Act which would be akin to a plaint if the claim were to be lodged in a civil suit.

16. The key words of section 21 of the Act are "debt is due". A debt, even within the meaning of section 2(g) of the said Act, may be said to be due only if it is adjudged to be due. The expression "debt is due" in section 21 of the Act necessarily implies the quantum of money found to be due upon adjudication of the claim by a Debts Recovery Tribunal. The adjudication of a claim, ordinarily, happens only upon the conclusion of the proceedings launched u/s 19 of the Act. In some cases a part of the claim may be adjudicated upon while the adjudication of the balance claim is postponed. It is evident, therefore, that section 21 of the Act is restricted to a stage after the passing of the final order (and a final order may be restricted to a part of the claim and need not necessarily conclude the lis) passed by a Debts Recovery Tribunal and the requirement of a pre-deposit is only for a would-be appellant from whom an ascertained sum is adjudged to be due to a bank or a financial institution or a consortium of banks or financial institutions. Section 21 of the Act, by its very nature, cannot apply to appeals from orders made prior to adjudging the would be appellant to be a debtor to a bank or a financial institution or a consortium of banks or financial institutions. Indeed, the quantum of pre-deposit as recognized in section 21 of the Act is a percentage of "the amount of debt so due from him as determined by the Tribunal u/s 19" as the closing words of the body of the section indicates. The operative words of the section may, for the present purpose, be read thus:

Where an appeal is preferred by any person from whom the amount of debt is due... such appeal shall not be entertained... unless such person has deposited... seventy-five percent of the amount of debt so due from him as determined by the Tribunal u/s 19.

17. That the pre-deposit is required to be made, subject to the appellate tribunal's authority to waive or reduce the amount, by a person seeking to prefer an appeal from an order adjudging such person to be indebted to a bank

or the like is evident. The pre-deposit may also be required to be made, subject again to the appellate tribunal's power to waive or reduce the amount, if an appeal is preferred by a person adjudged to be indebted to a bank or the like even if the order sought to be appealed against may not be the order of adjudication of the indebtedness of the would-be appellant. It is possible that a certificate (the equivalent of a decree) is passed by a Debts Recovery Tribunal against a respondent to a petition u/s 19 of the Act on the basis of an admission in recognition of the principle embodied in Order XII Rule 6 of the Code. It is possible that the certificate-debtor does not prefer an appeal from the certificate passed on admission, but prefers an appeal from an interlocutory order at a subsequent stage. Section 21 of the Act describes the legal character of the person who is the would-be appellant and not the nature of the order that is sought to be appealed against. The operative words in section 21 of the Act are "by any person from whom the amount of debt is due." A person who is adjudged to be a debtor to a bank or the like would continue to be liable unless the certificate is set aside. If such person were not to prefer an appeal from the order finding him indebted to a bank or the like, but seeks to prefer an appeal from a subsequent interlocutory order, such person continues to be a person from whom an amount of debt has been adjudged to be due. Unless such person has preferred an appeal from the order finding him indebted to a bank or the like and has deposited the requisite sum, subject to the waiver or reduction of the amount as directed by the appellate tribunal, the requirement of the pre-deposit will continue to operate on the person even if he were to prefer an appeal from a subsequent order and notwithstanding such subsequent order being of interlocutory nature and not finding such person to be indebted to a bank or the like in any additional sum.

18. Sections 17(2) and 20(1) of the said Act allow all orders made or deemed to have been made by a Debts Recovery Tribunal to be appealable except orders made by the Debts Recovery Tribunal with the consent of the parties. The appellate provision in section 20 does not limit the scope of preferring an appeal to a category of orders as is done by the Code in claims lodged before a civil court. Nonetheless, if the plain words of a statutory provision are unambiguous, there is little room for the Court to make any purposive interpretation founded on the Court's perception of the legislative intent either for the provision in particular or for the statute in general. Equally, a right conferred by a statute which is incapable of any ambiguity cannot be read down or hedged with onerous conditions, particularly by a tribunal that owes its creation to the same statute. It is not for this Court to lay down the guidelines for, or draw the contours of the natures of orders from which an appeal may be entertained u/s 20 of the said Act. But section 21 of the said Act is limited in its scope and operation and cannot be extended to every appeal made by every respondent to the proceedings u/s 19 of the said Act if a bank or the like has claimed a debt to be due from such person.

19. If there is a practice in vogue in the appellate tribunal of requiring pre-

deposits to be made in terms of section 21 of the Act in case of appeals filed by persons who have not been adjudged to be indebted to a bank or the like, it may owe its birth to an erroneous description in the first column of the chart that forms a part of Rule 8(2) of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994. Sub-rule (2) of Rule 8 quantifies the amounts of fee payable in respect of appeals u/s 20 of the Act. The chart in the sub-rule has two columns entitled "Amount of debt due" and "Amount of fees payable." The more appropriate description of the first column would have been "Amount of debt claimed to be due or amount of debt due" rather than what appears now. It is elementary, however, that the rules prescribed by a subordinate legislation cannot be in excess or in derogation of the statute under which it is made. For one, if the power to make the rules is delegated by the legislature to the executive, the rules need to conform to the statute. More fundamentally, neither the rules made under a statute nor the authority to make the rules can impinge on any right conferred by the relevant statute. Section 36 of the said Act of 1993 empowered the Central Government to make rules "to carry out the provisions of this Act." The specific areas enumerated in section 36(2) include "the form in which an appeal may be filed before the Appellate Tribunal u/s 20 and the fees payable in respect of such appeal" under clause (d) of the sub-section. In specifying the fees payable for filing appeals u/s 20 of the Act, the Central Government could not have implied in Rule 8(2) of the said Rules that only an appeal from a final order (or a partial final order in the sense of the order finally dealing with a part of the claim) may be maintained as the erroneous heading of the first column of the chart forming a part thereof now suggests.

20. In the present case, the appeal sought to be preferred by the petitioners was against an order of the relevant Debts Recovery Tribunal disallowing the petitioners' plea for cross-examining the bank's witness. As at the time of preferring the appeal, no amount of debt was adjudged to be due from the petitioners or either of them to the bank u/s 19 of the Act. In neither petitioner being a person from whom any amount of debt was determined by the relevant Debts Recovery Tribunal to be due u/s 19 of the Act, the appellate tribunal could not have imposed the onerous condition of the appellants or either of them being required to make a pre-deposit for the proposed appeal to be entertained. The orders dated September 17, 2012 and October 16, 2012 passed by the appellate tribunal are set aside and the proposed appeal restored to the file of appellate tribunal for the appellate tribunal to consider the same in accordance with law. The application made by the petitioners herein for waiver of the pre-deposit for the purpose of the proposed appeal to be entertained was misconceived and is not required to be considered.

CO No. 4051 of 2012 succeeds. There will be no order as to costs.

Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.