

(1999) 05 CAL CK 0011
In the Calcutta High Court
Case No : C.O. No"s. 851 and 852 of 1995

Tapan Kumar Mukhoty

APPELLANT

Vs

Bank of Madura Ltd. and Another

RESPONDENT

Date of Decision : 17-05-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 11

Constitution of India, 1950 — Article 141, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19

Citation : AIR 1999 Cal 305

Hon'ble Judges : Dibyendu Bhusan Dutta, J

Bench : Single Bench

Advocate : Subhra Kamal Mukherjee and D. Ray, for the Appellant; P.P. Banerjee and S. Sen, for the Respondent

Judgement

Dibyendu Bhusan Dutta, J.—These two civil revision cases arise out of two applications under Article 227 of the Constitution of India challenging the legality of three orders being Orders Nos. 22 dated 2-5-95, 24 and 25 dated 8-5-95 passed in a proceeding being O.A. No. 41 of 1994 pending before the Debts Recovery Tribunal, Calcutta.

2. These two cases have a chequered background and the facts relevant for disposal of these two cases may, in short, be stated as follows.

The proceeding before the Debts Recovery Tribunal arose out of an application filed on 9-8-94 by the opposite party No. 1 bank against the petitioner u/s 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "The Act of 1993") for a certificate for recovery of a sum of Rs. 21,93,500/- together with interest thereon on the following allegations.

The petitioner represented to the bank that he was carrying on a business under the name and style of Mukhoty Engineering Works at 43/6/24, Jhill Road, Calcutta. At the request of the petitioner, on or about 24th May, 1994 the bank

granted a credit facility in the nature of bill discounting facility in favour of the petitioner and/or his proprietorship firm at the bank's Burrabazar branch office to the extent of Rs. 21,93,500/- at the rate chargeable in respect of such facility. In pursuance of the grant of the said credit facility, the petitioner opened a current account in the Burrabazar branch office of the opposite party bank in the name of the said proprietorship firm of the petitioner. The bank granted the credit facility to the extent of Rs. 20,97,712/- by discounting a bill of the petitioner being Bill No. 326 dated 30th April, 1994 drawn on the opposite party No. 2, Tata Iron and Steel Company Limited, Jamshedpur for a total sum of Rs. 21,93,500/-. The petitioner also drew bill of exchange upon Tata Iron and Steel Company in favour of the opposite party bank for a sum of Rs. 21,93,500/-. As per the said bill of exchange, the Tata Iron and Steel Company was the drawee and the opposite party bank was the payee thereof. The said loan and advances made by the bank were secured by the aforesaid bill No. 326 dated 30th April, 1994 drawn on Tata Iron and Steel Company and also the bill of exchange dated 30th April, 1994 which was payable after 90 days to the bank or order. In acknowledgment of the said loan and for the purpose of creating or securing that loan, the petitioner did also execute demand promissory note dated 30th May, 1994 for a sum of Rs. 21,93,500/- repayable by the petitioner together with interest and a bill purchase agreement at 30-5-94. Subsequent to the disbursement of the loan amount under the said bill purchase facility, the petitioner approached the bank for discounting further bills for diverse amounts. The bank, before granting for their credit facility in the nature of bill discount, insisted on compliance with certain requirements by the petitioner, such as arranging for inspection of the site of the petitioner's firm but the petitioner avoided such compliance and on some evasive pleas. The bank became suspicious about the conduct of the petitioner, accordingly produced the said bill along with the copy of the challan and the bill of exchange before the opposite party No. 2 on 16th June, 1994 for verification of its genuineness whereupon it transpired that the said documents were forged and not genuine. The bank thus came to know about the real intention of the petitioner which was to deceive the bank on false representations and withdraw the money which was lent on advance by the bank. After the detection of the fraud, the bank lodged an FIR with the Deputy Commissioner of Police, Detective Department, Lalbazar on 9th July, 1994 on the basis of which a criminal proceeding has been initiated against the petitioner. The petitioner was arrested in connection with that case and was in police custody. Before the lodging of complaint with the police authority, the petitioner had paid a sum of Rupees 50,000/- by cheque dated 5th July, 1994 towards part payment of the sum which was fraudulently withdrawn by him in the manner stated above. The bank has kept the said sum in the suspense account. In the circumstances, a total sum of Rs. 21,93,500/- inclusive of interest calculated up to 10th August, 1994 was due from and payable by the petitioner to the bank under the said bill purchase facility which the petitioner has failed and neglected to pay in spite of demands.

3. On 10-8-94, on the prayer of the bank, the Tribunal was pleased to pass an interim order of injunction against the petitioner.

4. On 14-9-94, the petitioner filed two applications. One of them was u/s 17 read with Section 22 of the Act of 1993 and the rules framed thereunder praying for (i) rejection of the bank's application u/s 19(ii) taking the same off the file and (iii) also for stay of the hearing of the said application and all proceedings thereunder before the Tribunal on the ground that the said application as framed was not maintainable before the Tribunal because of the fact that the alleged claim of the bank having arisen out of the alleged fraudulent action of the petitioner could not relate to a debt as defined in Section 2(g) of the Act of 1993 and was thus not amenable to the jurisdiction of the Tribunal.

5. By the other application that was filed on 14-9-94, the petitioner prayed for stay of all proceedings before the Tribunal till the disposal of the criminal case initiated against the petitioner and also for an injunction restraining the bank from proceeding with the its application u/s 19 of the Act being O.A. No. 41 of 1994 before the Tribunal till the disposal of the criminal case on the grounds that the criminal case and the proceeding before the Tribunal were based on the selfsame cause of action and that in view of the pendency of the criminal proceeding the petitioner is not obliged to disclose his defence in the pending Debt Recovery case before the Tribunal and that in case the petitioner is compelled to disclose his defence in the present proceeding before the Tribunal, he would be immensely prejudiced in defending the criminal case which is still at its preliminary stage without any charge- sheet having been filed against the petitioner.

6. On 15-2-95, the petitioner made another application for vacating the interim order of injunction that was passed on 10-8-94 by the Tribunal.

7. The application that was filed by the petitioner on 14-9-94 for summary rejection of the bank's application u/s 19 was heard and rejected by the Tribunal on merits by its order No. 17 dated 20-2-95. The petitioner however filed an application on 20-3-95 for review of the order No. 17 dated 20-2-95 alleging that the Tribunal has committed an error apparent on the face of the record by holding that nothing has been stated by the petitioner against the alleged demand promissory note particularly when the petitioner had no occasion to state anything about the said promissory note inasmuch as he has not yet filed any written statement in the proceeding before the Tribunal. The review was sought for also on the ground of discovery discretionary of new and important matters and evidence which after due diligence could not be produced by the petitioner at the time when the order No. 17 dated 20th February, 1996 was passed. The petitioner, however, did not disclose in the application for review the nature and character of such new and important matters and evidence which are said to have been discovered after the passing of the order dated 20-2-95.

8. The other application for stay till disposal of the criminal case that was filed on

14-9-94 on behalf of the petitioner was heard on 2-5-95 and the Tribunal rejected this application for stay by passing order No. 22 dated 2-5-95. On 2-5-95, two other applications were also fixed for hearing such as one that was filed by the petitioner for review of the order dated 20-2-95 and the application that was filed by the petitioner on 15-2-95 for vacating the interim order dated 10-8-94. But hearing of both the applications was adjourned at the instance of the petitioner till 8-5-95 by the Tribunal by order No. 23 dated 2-5-94.

9. On 8-5-95 both sides were present with their respective lawyers but a prayer was made on behalf of the petitioner for another adjournment, for a period of two months, of the hearing of both the application dated 15-2-95 and his review petition dated 20-3-95 on the ground that he would move the High Court against the order No. 22 dated 2-5-95 whereby the Tribunal rejected his application for stay. Upon hearing this application for adjournment, the Id. Tribunal was pleased to reject the same by the order No. 24 dt. 8-5-95 and directed the petitioner to proceed with the hearing of the applications that were fixed for hearing on that date. Later on that very date, when the case was taken up for hearing of those two petitions, a petition was again filed on behalf of the petitioner for adjournment on the ground that his senior advocate Mr. Udayan Sen was physically unfit. This petition was neither verified nor supported by any affidavit and since earlier on that day when the Id. lawyer for the petitioner moved the application for adjournment he did not tell the Tribunal anything about the alleged unfitness of the Id. senior advocate. Accordingly, the Tribunal rejected this application for adjournment by the impugned order No. 25 dated 8-5-95 and directed the Id. lawyer for the petitioner to immediately proceed with the hearing of the matters which were set down for hearing on that date. At that stage, the Id. lawyer for the petitioner had orally prayed for an adjournment till 2 p.m. in order to inform the Id. senior advocate Mr. Sen. The Tribunal rejected this oral prayer and refused to grant any adjournment. At that stage, the Id. lawyer for the petitioner submitted before the Tribunal that he was not going to take any step in that matter and under such circumstances, by the selfsame impugned order No. 25 dated 8-5-95 the Id. Tribunal rejected the two applications of the petitioner, which were filed on 15-2-95 and 20-3-95 for vacating the interim order of injunction and for review of the order No. 17 dated 20-2-95, for default. The Tribunal also awarded cost against the petitioner and fixed 18-5-95 as the next date for filing of the written statement by the petitioner.

10. Mr. Subhra Kamal Mukherjee, the Id. Counsel appearing for the petitioner, in assailing the three impugned orders made the following points. It was submitted that the Id. Tribunal was not justified in refusing to grant the stay of the Debt Recovery proceeding till the disposal of the criminal case by the impugned order No. 22 dated 2-5-95 because if the Tribunal proceeds with the Debt Recovery proceeding before the final disposal of the criminal case the petitioner would have to file written statement in the said proceeding wherein he would virtually be compelled to disclose his defence which might prejudicially affect his interest in the criminal case and that the refusal to grant the stay is likely to cause the

embarrassment to the petitioner. Mr. Mukherjee places his reliance on two decisions of the Supreme Court reported in *M.S. Sheriff Vs. The State of Madras and Others*, *M. S. Sheriff v. State of Madras* and *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, in support of his contention that the present proceeding should have been stayed till the disposal of the criminal case. It is further submitted by Mr. Mukherjee that the petitioner being aggrieved by the said order dated 2-5-95 was entitled to pray for an adjournment of hearing of his two other applications dated 15-2-95 and 20-3-95 which were scheduled to be heard on 8-5-95 before the Tribunal so that he could move the High Court against the order dated 2-5-95 and bring the stay order and as such the Id. Tribunal was not at all justified in refusing to grant that adjournment. It is submitted that the Id. Tribunal in refusing to grant the adjournment by order No. 24 dated 8-4-95 acted unreasonably in disbelieving the intention of the petitioner to move the High Court only because of the fact that the petitioner did not already move the High Court during the period of six days that intervened between the date of passing of the impugned order dated 2-5-95 and 8-5-95, the date on which the adjournment was prayed for. It was further submitted that by the impugned order No. 25 dated 8-5-95 the Tribunal was not at all justified in refusing to grant the further adjournment that was sought for on the ground of physical unfitness of the senior advocate of the petitioner.

11. Mr. P. P. Banerjee, the Id. Counsel for the opposite party bank assailed the present applications under Article 227 of the Constitution of India on the following points.

First, Mr. Banerjee raised a preliminary objection contending that the impugned orders are appealable to the appellate tribunal u/s 20 of the Act of 1993 and as such the present applications, under Article 227 are not maintainable because of the existence of an alternative remedy by way of an appeal.

Next, he argued that both the applications that were filed on 14-9-94 by the petitioner before the Tribunal were virtually grounded on identical facts. It is submitted that the real intention of the petitioner was to delay the disposal of the proceeding before the Tribunal because even in the application u/s 17 read with Section 22 of the Act, the petitioner prayed not only for summary rejection of the application u/s 19 but also for stay of all the proceedings before the Tribunal and the stay was sought for on the selfsame ground of pendency of the criminal case on which the other application was filed on 14-9-94 primarily for stay and also for injunction restraining the bank from proceeding with the application u/s 19 of the Act. According to Mr. Banerjee, a scrutiny of the two petitions dated 14-9-94 would at once reveal the fact that they were designed only to arrest further proceeding of the O.A. No. 41 of 1994 before the Tribunal till the final disposal of the criminal case. It is submitted that Sections 17 and 22 of the Act do not warrant summary rejection of an application u/s 19 of the Act, unlike Order 7, Rule 11 of C.P.C. It is submitted that the provisions of Order 7, Rule 11 of the C.P.C. do not apply to the instant proceeding u/s 19 of the Act because the

Tribunal is neither a Civil Court nor governed by the provisions of the Civil Procedure Code. Mr. Banerjee made a reference to (1998) 1 Cal LJ 571; Spectrum Electronics v. State Bank of India in support of his contention that the Tribunal is not a Civil Court to be governed by the Code of Civil Procedure. It is submitted that the prayer for summary rejection of the application u/s 19 was incompetent. Mr. Banerjee contended that the allegation of forgery that was made on behalf of the bank related to the bill of exchange and the connected bill but not to the demand promissory note which is said to have been executed by the petitioner. According to Mr. Banerjee, the allegations made in the application u/s 19 of the Act would leave no room for doubt that the bank did make out a prima facie case for recovery of a debt within the meaning of Section 2(g) of the Act against the petitioner. The alleged debt is said to be based on the demand promissory note and has got nothing to do with the question as to whether the bill of exchange produced by the petitioner was forged or not. Mr. Banerjee contends that the petitioner might have practised fraud upon the bank so as to induce it to advance the loan on the basis of which the petitioner is said to have incurred the debt within the meaning of the Act for recovery of which the application u/s 19 was filed by the bank. The fact that some forged documents were utilised by the petitioner in inducing the bank to advance the loan does not affect the existence of the debt for recovery of which the application u/s 19 was filed before the Tribunal. Accordingly Mr. Banerjee submits that even on merits the said application was quite within the scope of the Act and jurisdiction of the Tribunal to be adjudicated upon and in filing the two applications on 14-9-94, the petitioner was actuated with a mala fide intention to stall the proceeding before the Tribunal.

It is next contended by Mr. Banerjee that the Tribunal is not vested with the discretion to decide a preliminary point as contemplated under Order 14, Rule 2, C.P.C. Reliance has been placed by Mr. Banerjee on a single Bench decision of our High Court, reported in M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others, On the question of stay of the proceeding u/s 19 of the Act till disposal of the criminal case, Mr. Banerjee argued that the Supreme Court decision cited on behalf of the petitioner in M.S. Sheriff Vs. The State of Madras and Others, dealing with the question of stay as between civil case and a criminal case cannot apply here because the proceeding before the Tribunal cannot be a civil case. He also argued that there was no identity of issues involved in the present proceeding before the Tribunal and the criminal case initiated by the bank. Mr. Banerjee also argued that the question of embarrassment of the petitioner is not a relevant factor in considering the question of stay. The embarrassment for avoiding which the stay should be granted is the embarrassment of the Court and not of the accused. Mr. Banerjee also argued that the observations made by the Supreme Court in M. S. Shariff s case were obiter dictum and do not constitute the ratio decidendi so as to bind this Court. In support of this argument, Narain Das Vs. The State of Uttar Pradesh, ; Narain Das v. State of Uttar Pradesh and submits that in paragraph 5 of this decision, the Supreme

Court observed that in M. S. Shariff s case the question considered was whether an appeal lay to the Supreme Court u/s 476B of the old Cr. P. C. from an order of a Division Bench of a High Court.

Mr. Banerjee relied on a decision, reported in Senior Divisional Manager, National Insurance Company Ltd. and Another Vs. Satima Cold Storage and Others, in support of his contention that the decision of the Criminal Court in the facts and circumstances of the case cannot have any bearing on the decision of the proceeding before the Tribunal.

It is further submitted by Mr. Banerjee that in view of the order No. 17 dated 20-2-95 passed by the Tribunal rejecting one of the two applications filed on 14-9-94, the subsequent application dt. 14-9-94 for simple stay of the proceeding till the disposal of the criminal case was hit by the mischief of principles of res judicata inasmuch as the petition which was disposed of by that order dated 20-2-95 did also contain a prayer for stay and the Tribunal had assigned reasons as to why it did not consider it fit to stay the proceeding till the disposal of the criminal case.

Mr. Banerjee further submitted that the prayer for review of the said order dated 20-2-95 was frivolous and motivated aimed only at delaying the disposal of the proceeding before the Tribunal, According to Mr. Banerjee, there was no ground worth the name which could justify a review of that order. It is submitted that there is no error apparent on the face of the order dated 20-2-95 because the petitioner might not have filed any written statement in this proceeding before the Tribunal but it is not the case of the bank that the demand promissory note on which the present proceeding is based was also a forged one. The forgery related to the signature of the opposite party No. 2 appearing in the bill of exchange and not to the promissory note purported to have been executed by the petitioner in favour of the bank. There was thus nothing wrong on the part of the Id. Tribunal in making the observations in its order dated 20-2-95 to the effect that nothing against the demand promissory note has been stated by the applicant respondent. It is also argued that nothing could prevent the petitioner from arguing his case in support of his application for review as also the application dated 15-2-95 for vacating the interim injunction on 8-5-95 and that the rejection of his prayer for stay as made in the second application of 14-9-94 by the Tribunal's order dated 2-5-95 would not stand in the way of his proceeding with the hearing of his other two applications for review and vacation of the interim order. Mr. Banerjee also submitted that initially on 8-5-95 the petitioner prayed for adjournment not on the ground of physical unfitness of his senior advocate but on the ground of his intention to move the High Court against the order dated 2-5-95. Mr. Banerjee submits that the fact that the ground of physical unfitness was anything but true would be borne out by the fact that it was disclosed only after the rejection of the petitioner's earlier application for adjournment on 8-5-95. Mr. Banerjee finally submitted that there is neither any abuse of the process of the Court nor miscarriage of justice

occasioned by any of the three impugned orders of the Tribunal so as to justify any interference by invocation of the extraordinary jurisdiction of this Court under Article 227 of the Constitution.

12. The preliminary objection that has been raised by Mr. Banerjee against the maintainability of the present applications under Article 227 of the Constitution merely on the ground of appealability of the impugned orders is not sustainable in view of the fact that it is well settled principle of law that even if there is an alternative remedy by way of an appeal against a particular order of any tribunal is still open to an aggrieved party to file an application under Article 227 of the Constitution against such an order of the Tribunal if it is found that the order passed is without jurisdiction or arbitrary or in violation of the principles of natural justice. In *M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others*, application was filed by the loanee before the bank recovery tribunal praying for return of the plaint on the ground that the tribunal had no jurisdiction to entertain a mortgage suit and for stay of the further proceeding before the Tribunal till the said application was decided. The Tribunal there was constituted under the Act of 1993 and on the aforesaid application the Tribunal passed order directing that the jurisdictional point should be decided along with the main issues raised in the proceeding. Being aggrieved by such orders, the loanees came before the High Court under Article 227 of the Constitution and a similar preliminary objection was raised on behalf of the respective banks to the effect that appeal lay before the appellate Tribunal against the said orders of the Tribunal so much so that alternative remedy was there before the aggrieved party against the particular order of the Tribunal and the High Court overruled this preliminary objection. In so doing, the High Court having regard to the object and scheme of the Act of 1993 and the relevant provisions thereof took the view that any order and every order that would be passed by the Tribunal would not be appealable u/s 20 of the Act and that the provisions for appeal under the Act shall be applicable only in case a final order is passed by the Tribunal. In the instant case, the impugned orders cannot be characterised as final orders and as such following the above decision it can be said that no alternative remedy by way of any appeal really lies against the impugned orders of the Tribunal. The preliminary objection that has been raised on behalf of the bank against the maintainability of the present applications must accordingly be overruled.

13. Sub-section(1) of Section 17 of the Act of 1993 vests a tribunal constituted under the Act with the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. "Debt" is, defined in Section 2(g) of the Act. It means any liability (inclusive of inferred which is alleged as due from any person by a bank during the course of any business activity undertaken by the bank, in cash or otherwise, whether secured or unsecured, subsisting on, and legally recoverable on, the date of the application. A bare perusal of the averments made in the application that was filed on behalf of the opposite party

bank u/s 19 of the Act before the Tribunal makes it clear that the application is one for recovery of debt due from the petitioner to the opposite party bank and it is really not understood how the question of want of any jurisdiction or any authority of the Tribunal to entertain and decide the instant application from the opposite party bank could arise. Sub-section (1) of Section 22 categorically provides that the Tribunal shall not be bound by the procedure laid down by the CPC but shall be guided by the principles of natural justice. It further provides that subject to the other provisions of the Act and any Rules framed thereunder, the Tribunal shall have power to regulate its own procedure. Sub-section (2) confers upon the Tribunals certain powers as are vested in a Civil Court under the CPC in respect of only certain matters specified in Clauses (a) to (g) for the purpose of discharging their functions under the Act. Clause (h) specifies any other matter which may be prescribed by the rules. Sub-section (3) provides that any proceeding before the Tribunal shall be deemed to be a judicial proceeding. It has been held in (1998) 1 Cal LJ 571 that the Act creates a complete code for the adjudication of matters referred to in Section 17 and provides for the procedure in respect thereof. The jurisdiction of the Civil Courts to try cases in respect of debts due to bank stands ousted by the Act. It is indeed not clear as to how the allegations of fraud made in the application u/s 19 in relation to the bill of exchange and some other documents would have the effect of ousting the jurisdiction of the Tribunal to entertain the application. There is no provision in the Act of 1993 analogous to those under Order 7, Rule 11, C.P.C. for summary rejection of an application u/s 19 of the Act. Even then it is needless to comment that if the Tribunal finds on the face of the averments made in the application that it does not have any jurisdiction to entertain and decide the application, it is certainly within its competence to refuse to grant the relief but not to throw the application out at the threshold. Want of jurisdiction has to be pleaded in the written statement so as to give rise to a preliminary issue on a question of law and in the instant case the petitioner has not chosen to file any written statement in the proceeding before the Tribunal. In M/s. Pratap Ch. Dey and others Vs. Allahabad Bank and others, it has been held that there is no discretion with the Tribunal to decide the preliminary issue of law as contemplated under Order 14, Rule 2 of the C.P.C. without deciding the other issue. It was further held that even if from the language of the amended Order 14, Rule 2 of the Code the Tribunal can be said to have a discretion to decide a preliminary issue of law in separation of other issues raised in the proceeding, the issue regarding jurisdiction shall have to be decided by the Tribunal along with the other issues raised by the proceeding. As such, the petitioner cannot be said to have adopted the proper procedure by approaching the Tribunal to decide the preliminary issue on the question of maintainability of the application in isolation. Viewed from that angle, the application that was filed on 14-9-94 by the petitioner for summary rejection of the application u/s 19 must be held to be misconceived and inappropriate. That apart, it is really not understood how the question of the petitioner being prejudiced could arise in case he is to file his written statement in the proceeding before the Tribunal during the pendency of the criminal case

that has been initiated against him by the bank for alleged forgery of the bill of exchange and some connected documents and not of the Demand Promissory Note on which the application u/s 19 was based. The question of stay of the proceeding before the Tribunal till the disposal of the criminal case was involved in the application dated 14-9-94 which was decided by the Tribunal by its order No. 17 dated 20-2-95. The criminal case would not have any bearing upon the decision of the proceeding before the Tribunal in the facts and circumstances of this case. The order No. 17 dated 20-2-95 has not been challenged Before the High Court. Once this question of stay having been agitated before the Tribunal and having been already decided by the Tribunal against the petitioner, it could not be reagitated at the instance of the petitioner before the Tribunal by a separate application dated 14-9-94. A person cannot be allowed to agitate the same matter again and again before the same Tribunal. The application for review of the order dated 20-2-95 does not give us any idea as to what new and important matter has been discovered which could not be made available before the petitioner in spite of his due diligence at the time when the order dated 20-2-95 was passed. There is also evidently no mistake of law apparent on the face of the order dt. 20-2-95. In the circumstances, how a review could be maintainable is beyond my comprehension. The petitioner kept the review petition dt. 20-3-95 pending and proceeded with the hearing of his application dated 14-9-94 for stay of the proceeding before the Tribunal till the disposal of the criminal case. The stay was really refused to be granted by the Tribunal on 20-2-95 by its order No. 17 when it rejected the petitioner's application dated 14-9-94 for rejection of the application and, presumably in the alternative, for stay of the proceeding till the disposal of the criminal case. By the subsequent application dated 14-9-94 for stay, the petitioner can be said to have virtually agitated the selfsame question of stay on 2-5-95 and the Tribunal cannot be faulted for its having rejected that application by the impugned order No. 25. Indeed, there is no scope for the petitioner being embarrassed in his defence in the criminal case in case he has to file written statement in the present proceeding. The Tribunal may not be a Civil Court in the strict sense of the term. But the proceeding that is pending before the Tribunal in the shape of an application u/s 19 of the Act of 1993 is in substance a civil proceeding.

14. I am unable to accept the contention of Mr. Banerjee to the effect that the observations made by the Supreme Court, in *M.S. Sheriff Vs. The State of Madras and Others*, on the question of grant of stay as between the civil and criminal proceeding in Paragraphs 15 and 16 were only the obiter dictum and did not constitute the ratio decidendi of that decision. Mr. Banerjee has made the decision reported in *Narain Das Vs. The State of Uttar Pradesh*, as his sheet anchor for such a contention. In this decision, the question decided was whether an appeal lay to the Supreme Court u/s 476B of the then Code of Criminal Procedure from an order of a single Judge of the High Court and the Supreme Court answered that question in the negative. On behalf of the appellant the decision of the Supreme Court in *M.S. Shariff* was cited because in *M.S. Shariff* s

case the question of appealability of an order of Division Bench of the High Court to the Supreme Court u/s 476B of the Criminal Procedure Code was also involved. But it did not form the only question to be decided. A reading of paragraph 14 of the judgment in M.S. Shariff of the Supreme Court will at once make it clear that the Supreme Court did proceed to determine the question as to whether simultaneous prosecution of the criminal proceedings out of which that appeal arises and the civil suits should be allowed. In determining which should be stayed the Apex Court in M.S. Sheriff Vs. The State of Madras and Others, made the following observations in paragraph 15 :

"As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Court of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment."

By no stretch of imagination it can be said that by making the above observations the Supreme Court did not lay down the principles that should be followed in determining which of the proceeding as between a civil and a criminal proceeding should be stayed. Moreover, even if it be assumed for the sake of argument that these observations do not constitute the ratio there would be no room for doubt that they would have binding force as obiter dictum of the Supreme Court which relate to matters of law. It is really not understood how Mr. Banerjee could argue that M.S. Sheriff's case does not lay down any binding proposition of law governing the question of grant of stay vis-a-vis criminal and civil proceeding.

15. In *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, the Supreme Court held that it is neither possible nor advisable to evolve a hard and fast, straight jacket formula valid for all cases and of general application without regard to the particularities of the individual situation on the question as to whether as between a disciplinary proceeding against a delinquent person and a criminal case against him which one should be stayed. The Supreme Court categorically observed in paragraph 6 that it does not intend to lay down any general guideline on this point. In the reported case, however, the disciplinary proceeding and the criminal action were ground on the same ground of facts and in the facts and circumstances of the case the disciplinary proceeding was allowed to be stayed by the Supreme Court.

16. In *M.S. Sheriff Vs. The State of Madras and Others*, civil suits were instituted for damages for the wrongful confinement while the criminal prosecutions were also for wrongful confinement and it was alleged that the simultaneous prosecution of these matters would embarrass the accused. In the given

circumstances of that case, the Supreme Court accepted the contention and stayed the civil suit till the criminal proceedings are disposed of.

17. In (1998) 3 Cal LT 119, in the facts and circumstances of that case, the High Court was of the view that the civil suit should not be stayed till the disposal of the criminal proceeding inasmuch as the High Court in the given circumstances did not find any substance in the apprehension of the petitioner to the effect that their defence in the criminal proceedings should be disclosed in advance if they were to file written statement in the civil suit.

18. Thus, giving due consideration to all the aspects of the matter, I am constrained to hold that there will be miscarriage of justice and abuse of the process of the Court in the case the impugned orders are set aside. The facts and circumstances clearly reveal the fact that the petitioner is determined to arrest the speedy disposal of the proceeding before the Tribunal and thereby to frustrate the object of the Act of 1993 by filing one application after another. The present applications under Article 227 of the Constitution are really devoid of any substance and I find no justification to interfere with any of the impugned orders passed by the Tribunal. The applications are dismissed with costs assessed at 200 Gms. The Tribunal is directed to proceed with the application of the opposite party No. 1 bank u/s 19 of the Act of 1993 as early as possible in accordance with law.