

(1999) 06 CAL CK 0017

In the Calcutta High Court

Case No : Ordinary Original Civil Jurisdiction G.A. No.465 of 1998

UCO Bank

APPELLANT

Vs

Hara Parbati Cold Storage Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 24-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 4, 24, 25
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 193, 196, 228
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 1(2),
17, 18, 22, 3

Citation : (1999) 3 CALLT 410

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Mr. Swarnendu Ghosh and Mr. Pramit Roy, for the Appellant; Mr. Girish Gupta, for the Respondent

Judgement

The Court :

1. This application is made by the defendant Nos. 10,13 and 17 praying, inter alia, a) Delay, if any, in making this application be condoned; b) Order of the learned Registrar transferring the records of Extraordinary Suit No. 24 of 1987 to the Debts Recovery Tribunal, West Bengal and Andaman and Nicobar Island be presently stayed, set aside and/or recalled: c) The Registrar, Original Side of this Hon"ble Court be directed to produce the order transferring the Extraordinary Suit No. 24 of 1987 from this Hon"ble Court to the Debts Recovery Tribunal. Salt Lake . Calcutta: d) The Registrar, Original Side of this Hon"ble Court be directed to intimate the Debts Recovery Tribunal. Calcutta for return of the records of Extraordinary Suit No. 24 of 1987 renumbered as T.A No. 109 of 1995 to this Hon"ble Court; e) Pending disposal of this application proceeding in T.A. No. 109 of 1995 now pending in the Debts Recovery Tribunal, Calcutta do remain stayed: f) Leave be given to make this application in the present form; g) Ad-interim orders in terms of the above prayers; h) Cost of and incidental to this application

be cost in the cause; i) Such further and /or other order be passed and direction and/or directions be given as to this Hon"ble Court may deem fit and proper.

2. Contesting parties have filed their respective affidavits.

3. Originally the plaintiff bank instituted a suit in the Court of First Assistant District Judge, Chinsurah, Hooghly, which was registered as Title Suit No. 59 of 1984.

4. Nature of such suit was usual bank suit praying various monetary reliefs and also praying mortgage decree as follows:

" a) Declaration that the goods, properties and assets mentioned in Annexures "B", "H", "J" and "O" stand hypothecated and/or charged in favour of the plaintiff for due repayment of the plaintiffs claim in Term Loan Account No. 1, Term Loan Account No. 11, Rentier Loan Account and Cash Credit Account;

b) Decree for sale of the goods, assets and properties mentioned in annexures "B", "H"."J" & "O" and payment of the sale proceeds thereof the plaintiff in protonate satisfaction of the plaintiffs claim;

c) A decree under Order 34, Rule 4 of the CPC in form No. 5 to Appendix "D" of the First Schedule of the CPC in respect of the properties mentioned in the schedule to the plaint."

5. Subsequently such suit was transferred to this Hon"ble Court in its Original Side by an order under Clause 13 of the Letters Patent at the instance of plaintiff/respondent bank itself and renumbered as Extraordinary Suit No. 24 of 1987.

Clause 13 of the Letters Patent speaks as follows:

"Clause 13 : extraordinary Original Civil Jurisdiction . And we do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have power to remove, and to try and determine, as a Court of Extraordinary Original Jurisdiction, any suit being of falling, within the jurisdiction of any Court, whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

6. This is an extraordinary power of the Original Civil Jurisdiction. High Court can apply such power of superintendence in respect of the matters lying in any Lower Courts for the purpose of justice on the basis of the circumstances of each case and the balance of convenience having regard to those circumstances is one of the matters for consideration. The grounds for transfer mainly are as follows:

"a) Wherein the Lower Court has dealt with harshly and without discretion and that decision turns mainly on points of law;

b) That difficult point of English law arise and generally where it appears to be a case that should not be tried in the mofussil court and that the interest of the

party will be prejudiced if the case is not transferred;

c) On the ground that the parties and witnesses reside in Calcutta, that it would be less expensive to try the suit there;

d) The parties desired the transfer ;

e) Like many other reasons for the purpose of justice and depending upon the balance of convenience.

7. Therefore, as and when the plaintiff/respondent bank itself applied for transfer of the suit from the appropriate court to the High Court in its Ordinary Original Civil Jurisdiction it can be presumed that analogy of Clause 13 of the Letters Patent was rightly applied by them for the purpose of obtaining the order of transfer. Such order has now binding effect.

8. Applicability of the Clause 13 of the Letters Patent is not unknown now because similar principle has also been adapted under the CPC in sections 24 and 25 therein. It is not necessary for the Superintending Court to decide as to whether such Court has any territorial or pecuniary jurisdiction or not because the transferee court will act as original Court. Therefore, in all, Court can get a view that such type of order of transfer is made under the power of superintendence but for the sake of judicial administration. For such reason the suit in the Original Side is marked as Extraordinary Suit.

9. In this respect concept of "better forum" cannot be ruled out. "Better forum" means better equipped forum in all respect having maturity, experience and infrastructure. A person is preferring an appeal before the High Court from an order or decree of the subordinate Courts because the same is obviously better forum than the subordinate Judiciary. There are various matters which are to be taken by the High Court alone because of the concept of better forum. High Court is one having different jurisdictions and allocation of business. Therefore under no stretch of imagination it can be said, without any judicial scrutiny only by a stroke of pen. that one of such jurisdiction of the better forum is less better and matters can be transformed to a forum apparently less competent than the High Court.

10. There is always historical background of formation of new law in the place and instead of existing law. Historical background herein is pendency of the cases. Now the question is "where"? The very appointment of the Judicial Officer of the District level as Presiding Officer of the tribunal and its placement itself speaks level as pending Officer of the tribunal and its placement itself speaks that the tribunal is substitute of subordinate Courts. Normal practice of the subordinate Court is posting cases as per case diary meaning thereby no regular hearing in normal circumstances which is Just reverse in the case of superior judiciary wherein lists are printed for the purpose of regular hearing. Therefore, the basic difference is between postponing approach and preponing approach. Question of review of the situation comes from there. Being such question is the

parameter of consideration before the legislature can not be said that the same is also applicable in respect of Chartered High Courts.

11. On 24th June, 1993 an act being Recovery of Debts due to Banks and Financial Institutions Act, 1993 came into force. Sections 17 and 18 of the Act say as follows :

"17. Jurisdiction, Powers and Authority of Tribunal :

1) A Tribunal shall exercise, on and from the appointed day, 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.

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.

18. Bar of Jurisdiction :

On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in section 17."

12. Section 1(2) of Act says " it extends to the whole of India except the state of Jammu and Kashmir." Section 22 of the Act laid down procedure and powers of the Tribunal and the Appellate Tribunal wherein it is stated that 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.

13. The Tribunal and the Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in Civil Court under the CPC 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 exparte;

h) Any other matter which may be prescribed.

14. Any proceeding before the Tribunal of the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228. and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Tribunal or the appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

15. It is apparent from the Act that there is no whisper about Original Side Rules of the Chartered High Courts of the country i.e. Calcutta. Bombay and Madras. The aforesaid observation is supported by the Notification dated 27th April, 1984 as an "Important Notification" published in the Gazette of India Extraordinary under part II. Section 3 and subsection (1) dated 27th April, 1994 No. F. 18(19)/93-Coord. Notification is as follows :

Government of India

Department of Economic Affairs

BANKING DIVISION

New Delhi, the

27th April, 1994.

NOTIFICATION

GRS (E). In exercise of the powers conferred by Section 3 of Recovery of Debts due to Banks-and Financial Institutions Act, 1993 (5 of 1993) the Central Government hereby established the Debts Recovery Tribunal at the places mentioned in column (2) of the Table below the corresponding entry in column (3) of the said table :

Serial Number Places at which Tribunal is established Area of Jurisdiction

(1) (2) (3)

1. 1st floor, Local Salt Lake, Calcutta-91 West Bengal, Andaman & Nicobar Island

2. III Floor, Vikrant Tower, Rajendra Place, New Delhi Delhi

3. Nehru Place Complex, Tonk Road, Jaipur Rajasthan, Himachal Pradesh, Punjab and Territory of Chandigarh

4. Krishi Bhavan (Near Police Corner), Nrupathunga Road, Bangalore-560 002 Andhra Pradesh, Karnataka

5. Samudra Annexe, Plot No. 322, C.G.Road, Opp. Shantanu Building, Navarangpura, Ahmedabad-380009 State of Gujrat and Union Territories of Darda and Nagar Haveli, Daman and Diu

Sd/-

(M.SRINIVASAN)

16. It is also abundantly clear from the notification that no State i.e. having Chartered High Courts i.e. Madras and Bombay High Courts were incorporated therein for the purpose of implementation of the Act by establishing the tribunals. It is also significant that tribunal for West Bengal and Andaman & Nicobar Island was established but no separate indication is there in respect of Original Side Jurisdiction of Calcutta High Court which is also a Chartered High Court like Madras and Bombay High Courts.

17. The Original Side of the Calcutta High Court even today is still noticeably the successor to the Mayor's Court and the Supreme Court. while the mofussil and subordinate courts throughout the province and the Appellate Side of the Calcutta High Courts, even today, are noticeably the successors of the Company's Courts; and the difference in the origins of their jurisdictions is still, even today, in certain respects apparent.

18. In the development of the Crown Courts on the one side and the Company's Courts on the other, which has been traced, it readily appears how there were four important respects in which the two systems of justice differed. Firstly in the law administered; secondly in the procedure adopted for the purpose of administering that law; thirdly in the language of the Court; and fourthly in the conflict of jurisdiction (geographical, personal and material). Behind these differences there was the difference in control, the one set of courts deriving Jurisdiction from and being under the control of the Crown and the other set of Courts deriving jurisdiction from the East India Company, originally as Dewan of the Moghul Empire, and being under the control of the Company.

19. It may be noticed that in spite of the Company's Courts having been long ago taken over by the Crown, these several matters of difference have been eliminated only to a varying extent; and traces of the differences between the two systems of justice in the Company's Court on the one hand, and the former Crown Courts (the Mayor's Court and the Supreme Court) on the other hand, still survive in certain curious respects today in their successors, the Appellate Side of the High Court and the mofussil and subordinate Courts on the one hand, and the Original Side of the High Court on the other.

20. The difference in the law administered previously in the two sets of courts still persists between the law administered in the Calcutta High Court on its Original Side on the one hand and the law administered in the subordinate courts throughout Bengal and in the Calcutta High Court on its Appellate Side on the other hand. In the one case the statute law existing in England in 1726 and the Common Law then existing being directly operative. In the other case no such statute law or common law being directly operative, but the general principles of justice, equity and good conscience being applicable, and such common law and statute law only being therefore operative if the court that the principles thereof

embody what the Court considers to be justice, equity and good conscience.

21. It is true that by a process of codification of law generally in India, and now also provincially in Bengal, under which certain statute law has been expressly created which is to be applied in all Courts universally throughout Bengal, the spheres, where, through absence of such universal legislation, there may remain a positive duality of systems of law, have been greatly diminished. But the fact remains that there continue to exist two essentially different systems of law.

22. Therefore upon visualising the sections as well as notifications it is apparent that power of the Chartered High Courts were not at all curtailed wherein the Original Side Rules will not only be squarely applicable but will have prevailing effect over and in respect of Code of Civil Procedure. Although the Act speaks that it extends to whole of India except the State of Jammu and Kashmir but by virtue of the notification u/s 3(1) jurisdiction, power and authority of the Tribunal is applicable only to few areas in the country as restricted under the notification. I have also come to know that Appellate Authority sits in Bombay in respect of the entire jurisdiction all over India or notified areas under the notifications but without having original jurisdiction and that too upon deposit of more than 50% of the amount under the order. Therefore, question of ultra vires is open to challenge. However an aggrieved can take appropriate steps in accordance with law and to that extent liberty is always there.

23. Be that as it may, it is abundantly clear that the Act is silent about the applicability in the area of the Chartered High Courts of the country where Original Side Rules are squarely applicable.

24. The contention of the petitioner is mainly for the retransfer of the suit from the concerned Debts Recovery Tribunal which is wrongly and/or erroneously transferred by the Registrar of the Original Side of this Court by an order dated 10th February, 1995 in the form of the letter addressing to the Presiding Officer of the concerned Debts Recovery Tribunal.

25. Before such transfer the Registrar placed the matter before the Chief Justice and the concerned Judge with an office note referring the precedent cases where the jurisdiction of the Calcutta High Court in respect of sales tax matters, railway claims matters and service matters under Article 226 of the Constitution of India were taken away and given to the Tribunal. He has proceeded on the following questionnaires :-

a) On and from 27.04.1994 all legal proceedings by the Banks and other Financial Institutions for recovery of their debts for Rs. 10 lakhs or above, have to be filed by way of application to . the Tribunal ?

b) All the pending suits and other proceedings relating to the recovery of debts of banks and other financial institutions pending in various Courts in West Bengal where the claim is Rs. 10 lakhs or above, shall stand transferred to such Tribunal ?

c) Suits in which appeals are pending could not be transferred to the Tribunal?

26. The relevant portion of the reference of the Original Side Registrar is as follows :-

"In this connection I refer the precedent cases where the jurisdiction of the Calcutta High Court in respect of Sales Tax Matters. Railways Claim Matters and Service Matters under Article 226 of the Constitution were taken away and given to the Tribunal. The cases pending herein had been transferred to the Tribunal in respect of the above as per order of the then Hon"ble The Chief Justice.

Regarding the points raised by the Chamber Clerk I most respectfully submit that from 27.04.1994 all legal proceedings by the banks and other financial institutions for recovery of their debts for Rs 10 lakhs or above, have to be filed before the Tribunal and not before this Hon"ble Court and all pending suits and other proceedings relating to the recovery of debts by the banks and other financial institutions pending in this Hon"ble Court involving the claim of Rs 10 lakhs and above, shall stand transferred to such Tribunal except those suits and proceedings in which the appeals are pending.

Under the circumstances as aforesaid, I most respectfully beg to submit that in view of the establishment of the Tribunal under the Debts due to the Banks and Financial Institutions Act, 1993 since 27.04.1994, this High Court has lost its jurisdiction over the suits and proceedings filed or to be filed by the banks or other financial institutions involving a claim for recovery of debts of Rs. 10 lakhs or above."

27. Surprisingly it appears that parties were directed to pay deficit Court fees even thereafter.

28. Ultimately proceeded to send the matters in bulk to the tribunal after getting verbal approval if any. It appears no specific question as to the transfer of the matters from the Original Side of this High Court was framed. It is also unknown as to whether formal approval of transfer of High Court Suits was obtained or not. Therefore such bulk transfer as made by the Registrar or Master either without or with implied approval appears to be nullity because it touches the very jurisdiction of the Original Side. There is no amendment of the Rules. There is assent of the authority. There is no notification. An act by which the Jurisdiction of the ordinary Courts of Judicature is taken away must be construed strictly. The Jurisdiction of ordinary Courts of Judicature is not to be taken away by putting a construction upon an Act which does not clearly say that it was the intention of legislature to deprive courts of their jurisdiction. Statutes should not be construed so as to take away the jurisdiction of superior Courts, or so to extend that jurisdiction by giving a right of appeal, Statutes giving jurisdiction to subordinate Courts. Tribunals, Government agencies must be strictly constructed and the procedure prescribed must be followed exactly. Rules which are merely rules made by Hon"ble Judges or by their officers for administrative purposes and are not made under any general or specific delegated power to make rules

conferred by any Act of the Legislature if not made under any power conferred by the Letters Patent or by an Act of Parliament or by an Act of the Central Legislature or by an Act of the Provincial Legislature, have no such statutory effect as is above referred to.

29. Next point is about the scope and ambit of the application. This application is made under Chapter VI Rule 15 of the Original Side Rules.

30. A question arose as to the applicability of Chapter VI Rule 15 of the Original Side Rules in this respect. Therefore, reading of Chapter VI Rule 15 of the Original Side Rules is required as set hereunder :

"Where any person affected by an order or decision of the Registrar or Master may apply therefrom to a Judge. Such appeal by way of endorsement of summons by the Registrar or Master at the request of any party or by any notice in writing to attend before the judge without the fresh summons within five days after the decision complained of, or such further time as may be allowed by a Judge or the Registrar or Master. Unless otherwise order, there shall be at least one clear day between the service of appeal and the day of hearing."

31. Therefore , it is abundantly clear that it is an ordinary appeal as we know. It is described as appeal because the concerned Court has power to scrutinise the issue pending before the Registrar or Master. The power is wide enough as prescribed under Chapter VI Rule 15 itself. By such power a person affected by an order or decision may apply for Judicial Scrutiny. In effect this power is power of superintendence of court specially when it is called upon.

32. In fact Registrar or Master is entitled to take various steps or pass various orders or take decision for judicial administration which may largely affect the parties interest but the same is obviously under judicial control of the Court concerned having allocation of business. Since the suits are under the control of the Suit Court, the Judge having allocation of business in respect of the suit will obviously have power to call upon the records and/or apply his mind in any of the order or decision of the Registrar or Master for Judicial scrutiny. If the judicial administration largely affect the judiciary definitely Registrar or Master is answerable to the Court concerned upon being called upon at the instance of any litigant. In the instant case the question of jurisdiction and question of nullity largely involved, therefore it cannot be said that it is not open for judicial scrutiny.

33. Moreover, Chapter VI Rule 15 as aforesaid has two parts order and decision. Upon looking into the actual meaning of the word "Decision" it appears that there are five types of decisions which are as follows :

1. a) the act of deciding;
- b) determination as to the question or doubt, in making a judgment; he must make a decision between these two contestants.
2. a judgment, as one formally pronounced by a Court, the decision is final.

3. the act of making up one's mind : This is difficult decision.

4. a) Something that is decided ;

b) a resolution :

He made a poor decision.

5. a) The quality of being decided ;

b) firmness :

He spoke with decision.

34. The Registrar initiated the proceeding suo mo to by applying his mind in respect of the subject matter in issue of suits pending in the Ordinary Original Civil Jurisdiction of this Court on the basis of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and himself formulated the questionnaires taking it granted that there is no other alternative but to send the suits to the Tribunal then the same is, of course, an interference with the judicial business of the court by the then Registrar or Master and open for the judicial scrutiny irrespective of the fact that the Chief Justice or any other Judge impliedly approved the same or not. The act on the part of the Registrar or Master seems to be extraordinary and the appeal under this Chapter also seems to be extraordinary before the Court for judicial scrutiny but due to power of superintendence as aforesaid the useful does not become ineffective by the useless by applying the test of utile per inutile non vitiatur.

35. The last point is specially in respect of the transferred suit. Transferred suit is transferred to this Court from a subordinate court under its power of judicial superintendence. Therefore the same cannot be transferred bulkwise to any other court or Tribunal by virtue of purported administrative order otherwise it will be direct interference with the judicial work of the Court by the Registrar or Master. Therefore also a leave of the suit Court, when it appears therein or by interlocutory court if it called upon is necessary. Lot of controversy arose in respect of transfer of the Suits and proceedings from the tribunal to this Court by it but was not thought that similar principle may also apply in transferring the suits from High Court, Original Side to the Tribunal specially in respect of the transferred suits. Therefore, in all, I say that leave is ought to be required from transferring transferred suit from the Original Side of this Hon"ble Court to other Court or Tribunal.

36. Hence, in all whatever manner the order was passed or a decision was taken by a Registrar or Master the matter has great importance for judicial scrutiny. I feel a pronouncement either in the form of appeal or an application or by virtue of a power of superintendence of the court having allocation of business in respect of the suits, when it is called for, is necessary.

37. Under these circumstances, I feel it is expedient that the application is rightly made before this Court to apply the judicial discretion in the subject context and

the Court is within the judicial restraint to finalise the issue for the future. Considering all aspects I am determining the issues in this respect accordingly :

- a) Debts Recovery Tribunal has no Jurisdiction to entertain, try and determine the suits and proceedings to be heard by the Original Side of Chartered High Courts i.e. the High Court at Calcutta herein;
- b) Transfer of suits and proceedings, if any, from the Original Side of Chartered High Court/s, without specific judicial scrutiny, is nullity;
- c) The Recovery of Debts due to Banks and Financial Institutions Act, 1993 has no retrospective effect in respect of any suit and proceedings instituted prior to this Act coming into force in this Court even before the subordinate Courts;
- d) Mode of appointment of Presiding Officer from the pannel of the District level Judicial Officers itself prescribes that the Tribunal formed as substitute of Subordinate Courts;
- e) Appeal to the Court from order or decision of the Registrar or Master under Chapter VI Rule 15 Original Side Rules does not necessarily mean usual appeal but power of superintendence for judicial scrutiny by the appropriate Court either within the prescribed period or with the leave of the Court at any point of time specially in case of nullity of Jurisdiction;
- f) Amenability of the order or decision of the Registrar or Master of the Original Side of High Court by the competent Court specially as to the important questions of Jurisdiction or nullity as herein in whatever manner or form cannot be dependable upon formal approval of anybody under any purported administrative capacity unless appropriate amendment of the Rules is made as per assent of the appropriate authority and notified ;
- g) Suits and/or proceedings pending in the Original Side of the High Court cannot be removed from the High Court to any other Court or Tribunal without the Judicial permission of the Suit Court or Interlocutory Court depending upon the circumstances having supremacy over the subject matter and having power of superintendence:
- h) Under Extraordinary Original Civil Jurisdiction the High Court having appropriate jurisdiction possesses power of superintendence, over and in respect of the subordinate courts in respect of removal and/or to try and determine any suit and when such power is invoked and suit is transferred before the High Court. Original Side, for the purpose of adjudication, such extraordinary power of judicial superintendence cannot be interfered with by the Registrar or Master of the Original Side with or without approval of the Chief Justice or any Judge under any purported administrative capacity but only subject to judicial leave from the suit court or from the interlocutory court i.e. wherein suit did not appear at all before any Suit Court;
- i) Notification No. F-18 (19)/93- Coord. dated 27th April, 1994 issued by

Government of India, Department of Economic Affairs, Banking Division, has no application as to any Chartered High Courts;

j) Applicability of the Original Side Rule as prescribed for the Chartered High Courts does not find place in the Act being the Recovery of Debts due to Banks and Financial Institution Act, 1993 itself:

k) Area of West Bengal and Andaman & Nicobar Islands as prescribed to be the jurisdiction under the Notification as well as the location of the Tribunal does not mean area of Ordinary Civil Jurisdiction of the Chartered High Court at Calcutta wherein the Original Side Rules prevail over and in respect of the CPC and maintains own territorial and pecuniary bindings ;

l) The Notification above being No. F-18 (19) 93 Coord. dated 27th April, 1994 as made by the Union of India u/s 3 of the Recovery of Debts due to Banks and Financial Act, 1993 is not in consonance with section 1 of the Act which gives short title, extent, commencement and application, therefore, making one entitled for appropriate judicial scrutiny;

m) The suits and proceeding already transferred without the test of judicial scrutiny as aforesaid by an appropriate bench of the original side of this Hon''ble Court are liable to be re-transferred to the original side jurisdiction of this Hon''ble High Court at Calcutta and to be heard from the stage it was lastly heard therein in the manner all Chartered High Courts doing the business in the country;

n) Till the transfers are made accordingly, all suits and proceedings so transferred from the Registrar of the Original Side this Hon''ble Court and pending therein remain stayed ;

o) Within the lean period, if any, suits and proceedings are disposed of by the Debts Recovery Tribunal such decision will not be interfered with but a formal leave to that extent should also be obtained either from the suit Court or from the Interlocutory Court to regularise the disposal of the same.

Therefore, with the above directions the application is disposed of. However, no order is passed as to costs.

The Registrar, Original Side, High Court. Calcutta, concerned Department, Presiding Officer. Debts Recovery Tribunal, Registering Officer. Debts Recovery Tribunal and all parties concerned are to act on a Xeroxed signed copy of the operative portion of this judgment and order on the usual undertaking.

38. Application disposed of