

(2019) 07 DEL CK 0424

In the Delhi High Court

Case No : Letters Patent Appeal No. 428 Of 2019

Union Of India

APPELLANT

Vs

Akshay Bipin

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 235
Indian Penal Code, 1860 — Section 325
Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 19,
19(22), 19(25), 26, 33, 34
Securitization And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 34

Citation : (2019) 07 DEL CK 0424

Hon'ble Judges : G.S. Sistani, J; Jyoti Singh, J

Bench : Division Bench

Advocate : Anil Soni, Sanjeev Bhandari, Prateek Kumar

Final Decision : Dismissed

Judgement

G.S. Sistani, J

CM Appl. 29866/2019 (exemption)

1. Exemption is allowed subject to all just exceptions.
2. Application stands disposed of.

CM Appl. 29867/2019 (delay in re-filing)

3. This is an application filed by the applicant/appellant seeking condonation of 38 days delay in re-filing the present LPA.
4. Prayer made in the application is not opposed. The same is allowed. Delay of 38 days in re-filing the LPA is condoned.
5. The application stands disposed of.

CM Appl. 29864/2019 (delay in filing)

6. This is an application filed by the applicant/appellant seeking condonation of 172 days delay in filing the present LPA.

7. Mr. Soni, learned CGSC submits that the reasons for delay in filing the LPA are cogent and the appellant was prevented from sufficient cause in filing the LPA. Learned counsel submits that the judgment was pronounced on 25.09.2018, however, the matter was listed before the learned Single Judge on 03.10.2018 for certain corrections and hence a copy of the judgment was received by the appellant only on 10.10.2018. The matter was then referred to the Department/ legal affairs, MOLJ, for their opinion regarding filing of the appeal. The opinion was received on 08.11.2018 wherein, it was advised that the appeal be filed challenging the judgment. The advice was considered by the appellant. The appellant, however, was of the view that filing of the appeal would lead to unnecessary litigation as the respondent had demitted office on 24.05.2018. However, going by the advice of the Department of Legal Affairs, it was decided to file the appeal. The appellant then procured all the documents and on 07.02.2019, sent a letter to the Litigation Cell, Delhi High Court to appoint a Central Government Standing Counsel. The counsel was appointed on the same day. The respondent then, in fact, filed a writ petition before the Hon"ble Supreme Court praying for continuing his term at the DRT, which was disposed of on 22.02.2019. Thereafter, a number of meetings took place between appellant and the counsel and after preparing the appeal, the same was signed and filed in this Court.

8. Prayer made in this application is opposed by Mr. Sanjeev Bhandari, learned counsel appearing for the respondent. He submits that the application lacks material particulars and is extremely casual in nature. It is pointed out that as per para 4 of the application, the matter was referred to the department of legal affairs to seek their opinion, which was received on 08.11.2018. It is submitted that even after 08.11.2018, the present LPA was filed on 15.04.2019. There is no plausible explanation for the time taken between November, 2018 and April, 2019.

9. Learned counsel for the appellant while placing reliance on the case of Office of the Chief Postmaster General & Ors. Vs. Living Media India Limited and Anr., reported in AIR 2012 SC 1506 submits that a consistent view has been taken while considering the application seeking condonation of delay, a liberal approach must be followed by the Court which shows that a meritorious matter is not left to be decided purely on technical reason.

10. We have heard learned counsel for the appellant and have examined the application. Taking into consideration the relevant paras of the application seeking condonation of delay, we are of the view that the applicant has failed to make out a case to show that there were sufficient reasons for the delay. The application is vague and lacks material particulars.

11. In the case of Office of the Chief Postmaster General (supra), the Supreme Court of India has analysed the entire law on the subject, more particularly paras 11 to 13 which, read as under :

"11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to

accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

12. Although, we find that the appellant has not been able to make out a case for condonation of delay, however, since, we have heard the matter on merits as well, we condone the delay in filing the appeal.

13. The application stands disposed of.

LPA 428/2019

14. The appellant is aggrieved by the judgment dated 25.09.2018 passed by a learned Single Judge of this court by which a writ petition filed by the respondent stands allowed. The respondent/writ petitioner had sought a writ for certiorari seeking quashing and setting aside the impugned Memorandum of Article of charges dated 28.03.2018 alongwith its annexures and all subsequent proceedings emanating therefrom. A direction was also sought to quash and set aside the order dated 17.04.2018 and all subsequent proceedings emanating therefrom. By a detailed judgment, the writ petition stands allowed. Before we consider the rival submissions made by learned counsels for the parties, we deem it appropriate to set out the facts which had given rise to the filing of the writ petition which has been noticed by the learned Single Judge. The facts contained in the judgment dated 25.09.2018 read as under :

15. The petitioner (respondent herein) was appointed as Presiding Officer of the Debt Recovery Tribunal (hereinafter referred to as "DRT"), Chandigarh, on 15th December 2014. His tenure as Presiding Officer, came to an end on 24th May, 2018.

16. Less than two months prior to the expiry of his tenure, the petitioner was issued a charge-sheet dated 28th March, 2018. The charge sheet related to the order dated 15th July, 2016, passed by the petitioner, confirming the compromise of 20 lakhs entered into, between the PNB and the two borrower firms, i.e. M/s Barkat Ram Jeevan Kumar (hereinafter referred to as "Barkat") and M/s Jeevan Petroleum (hereinafter referred to as "Jeevan"). It was the allegation in the charge-sheet that the orders had been passed by the petitioner in a disposed of OA 177/2009 which had the effect of withdrawal of the two Recovery Certificates (RCs). The total value of the two RCs was Rs. 2,37,55,771/-, which was substantially higher than the compromise amount of

Rs. 20 lakhs. The Statement of Imputations attached to the charge-sheet also noted that the payment of the loan, taken by the two borrowers from the Bank, was secured by way of mortgage of a piece of land, with a building constructed thereon, and that the said mortgaged property was to be auctioned and the reserve price fixed at Rs. 3.34 crores. It was further noted that proclamation of sale had been issued on 24th July, 2015, by the Recovery Officer for the said RCs, requiring deposit of the earnest money of Rs. 85 lakhs, by the intending bidder. As such, the charge-sheet alleged that the orders, withdrawing the Recovery Certificates, were passed by the respondent, on 15th July, 2016, unauthorizedly, without legal authority or justification. It was alleged that by acting in the aforesaid manner, the respondent unauthorizedly exceeded his vested judicial powers showing his incapacity to function as a Presiding Officer in a befitting manner" and that he was "guilty of misbehaviour".

17. We may also note that the DRAT in the suo moto action had taken note of the affidavits filed by the bank, who had entered into an amicable settlement with the borrower. We also deem it appropriate to notice that the borrower also sought financial assistance from New Bank of India, which had merged with Punjab National Bank and the Punjab National Bank inherited all the litigations, assets and liabilities of New Bank of India.

18. Mr. Soni, learned Standing Counsel, has reiterated the submissions made by him before the learned Single Judge. Mr. Soni reiterates that the courts ordinarily would not interdict disciplinary proceedings midway. He submits that no writ petition would lie against a charge-sheet or a show cause notice. Counsel contends that the law is well settled and thus, the learned Single Judge has exceeded its jurisdiction in allowing the writ petition and in quashing the charge-sheet. He further contends that the writ petition was premature and therefore, the same would not give any cause of action in favour of the respondent, especially, in view of the fact that mere issuance of a charge-sheet would not affect the rights of the respondent. Counsel further submits that there were justifiable reasons for the department, who have issued the charge-sheet. Mr. Soni has contended that the respondent, who was the Presiding Officer at the relevant time, could not have granted his approval to the settlement arrived at between the borrower and the bank for the reason that the amount of settlement was extremely meagre and the DRAT rightly took suo moto action based on a complaint made by an advocate in the matter and set aside the order of the Presiding Officer.

19. Mr. Soni further submits that the proper procedure would be that post the charge-sheet having been filed, the inquiry should be conducted and in case, the respondent has any grievance, he would then be entitled to safeguard his interest and protect his rights. Mr. Soni has relied on a decision passed by Supreme Court in the case of Union of India & another Vs. Kunisetty Satyanarayana, (2006) 12 SCC 28, more particularly, paras 13, 14 and 15, which read as under :

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet."

20. Mr. Bhandari, learned counsel for the respondent submits that there is no infirmity in the judgment dated 25.09.2018 passed by the learned Single Judge. It is contended that even assuming without admitting that there has been any irregularity in the order passed by the respondent, no case for disciplinary action is made out, which is evident from the fact that there is no allegation against the respondent that he induced the bank or forced or coerced the bank or pressurized the bank into arriving at a settlement with the borrower at an amount which was not just and proper. He further submits that even a consistent stand has been taken that there was no impropriety on their part to have arrived at an amicable settlement with the borrower. Mr. Bhandari also contends that even before the Chairman, DRAT, the consistent stand of the bank has been noticed in the order. The affidavits placed before the Chairman, DRAT also supported the settlement. Additionally, the DRAT itself has given a complete clean-chit to the respondent by observing that he did not smell a rat in the proceedings before the Presiding Officer while passing the order on 15.07.2016. It is contended by Mr. Bhandari that it is not an absolute rule that a charge-sheet cannot be quashed of course for a special reason and inappropriate cause. It is contended by the respondent that since the settlement had been arrived at between the borrower and the bank without the Presiding Officer having any role to play. The proceedings initiated against him would fall under the rare case

where the High Court under Article 226 of the Constitution of India would exercise its jurisdiction, which the learned Single Judge did and there is no infirmity in the same.

21. We have heard learned counsels for the parties and with their consent, we are disposing of this appeal at the admission stage itself. While there is no quarrel with the proposition sought to be urged by Mr. Soni that the courts would not ordinarily entertain a writ petition against a charge-sheet while we have extracted paras 13, 14 & 15 of the judgment in the case of Kunisetty Satyanarayana (supra), we also deem it appropriate to reproduce para 16, which reads as under :

"16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

22. While the Apex Court has observed that a writ petition is a discretionary relief and such discretion should ordinarily be exercised by quashing a show cause notice or charge-sheet, but this is not an absolute rule, the Supreme Court has further observed that in some very rare and exceptional case, the Supreme Court can quash the charge- sheet if it is found to be wholly without jurisdiction or wholly illegal. In our view, the learned Single Judge has kept this observation in mind while allowing the writ petition and for good reasons which we propose to highlight in the subsequent paragraphs.

23. Before the Chairman, DRAT, the Financial Institutions had filed two affidavits. Paras 14 to 21 of the affidavit read as under :

"14. I say that the third party objector tendered compromise proposal in R.C. No.118/2012 and R.C.No. 266/2006 of Rs. 20 lakhs for release of the aforesaid property and closure of the aforesaid cases.

15. I say that the relevant point of time, Mr. S.L. Agarwal, Assistant General Manager (Retd.) was the branch incumbent and he was competent to take a decision on the compromise proposal, which was before the committee consisting of Mr. S.L. Agarwal, Assistant General Manager (Retd.), Mr. Nika Ram, Senior Manager (Loan Incharge) (Retd.) and Mr. Manmohan Singh, Chief Manager (second man of branch) (Retd.).

16. I say that considering the insurmountable difficulty in auctioning the aforesaid property for recovery of dues and the loans having been covered with appropriate provisioning, it was felt appropriate to accept the compromise proposal and close the recovery cases in R.C.No. 118/2012 and R.C.No. 266/2006. Accordingly, the bank sanctioned the OTS dated 25.11.2014 for Rs. 20 lakhs which amount was to be deposited by Mr. Balkar Singh. Mr. Balkar Singh deposited the settlement amount within the prescribed period.

17. I say that the bank"s recovery policy has been duly followed in sanctioning

the OTS. The Circle Office of the bank, also accorded its approval to the OTS dated 25.11.2014.

18. I say that while arriving at the aforesaid settlement, no portion of the principal amount has been waived. The entire principal amount disbursed by New Bank of India under the loan facilities stands recovered. The bank, however, sacrificed interest as awarded under the decrees/recovery certificates as it felt that the aforesaid property will not ever be successfully auctioned.

19. I say that the OTS dated 25.11.2014 is valid and in accordance with law. The bank stands by the OTS dated 25.11.2014.

20. I say that the learned Tribunal has rightly closed recovery cases in R.C.No.118/2012 and 266/2006 respectively.

21. I say that the affidavit dated 07.12.2016 of Mr. Balbir Singh, Senior Manager contains correct depositions, which I reiterate and reaffirm to be true."

24. A reading of this affidavit would show that the financial Institutions had accepted the settlement and their stand was that the settlement was in the best interest of the bank. The deposition of this affidavit is of immense relevance for the reason that in case there were any kind of impropriety or any element of fraud or dishonesty of any official of the bank, the bank would have not supported the settlement, particularly after a complaint was brought to the notice of the bank and the bank was made aware of the suo moto proceedings pending before the Tribunal. This affidavit also highlights that proper procedure was followed before sanction was given for the settlement. The affidavit first highlights the insurmountable difficulty in auctioning the property for recovery of the dues in para 16 wherein it was deposed that the bank recovery policy has been duly followed in sanctioning the OTS. The Circle officer of the Bank also accorded its approval to the OTS dated 25.11.2014. The deponent also made it clear that while arriving at the settlement, no portion of the principal amount had been waived. The entire principal amount disbursed by the New Bank of India under the loan facility stood recovered and only the interest was sacrificed as it was felt that the property would not be successfully auctioned. Paras 19 and 20, we repeat, highlight the fact that the OTS dated 25.11.2014 is valid and is in accordance with law and the bank stands by the said OTS. The bank thereafter goes on to reiterate that the Tribunal has rightly closed the recovery cases. Yet another affidavit was filed by the bank, as per which, New Bank of India had granted credit facility sometime in the year 1986-87. M/s Jeewan Petroleum was sanctioned credit facility aggregating to Rs.1.40 Lakh and M/s Barkat Ram Jeewan Kumar was sanctioned credit facility aggregating to Rs.2.50 Lakhs. The suit was filed in the year 1990 for recovery of Rs.4,24,440.88 with interest, which was decreed on 05.09.1997 and in the second matter, suit for recovery was filed for Rs.6,68,170/-, which was decreed on 02.06.2008. As per para 13 of this affidavit, the mortgaged properties were auctioned for Rs.7 Lakhs and Rs.4 Lakhs respectively and the amounts received were appropriated in the loan

account of both parties. It has also been highlighted in this affidavit that another property available was put to auction at a reserved price of Rs.4.17 crores on 10.04.2013 and 28.08.2014 and on both days, the auction failed for want of bids. The affidavit also discloses that probably the aforesaid property stands sold to one Shri Balkar Singh, who tendered the compromise proposal, which was accepted. Paras 18, 19, 20 and 21 read as under:

"18. I say that the bank's recovery policy has been duly followed in sanctioning the OTS. The Circle Office of the bank, also accorded its approval to the OTS dated 25.11.2014.

19. I say that while arriving at the aforesaid settlement, no portion of the principal amount has been waived. The entire principal amount disbursed by New Bank of India under the loan facilities stands recovered. The bank, however, sacrificed interest as awarded under the decrees/recovery certificates as it felt that the aforesaid property will not ever be successfully auctioned.

20. I say that the OTS dated 25.11.2014 is valid and in accordance with law. The bank stands by the OTS dated 25.11.2014.

21. I say that the learned Tribunal has rightly closed recovery cases in R.C.No.118/2012 and 266/2006 respectively."

25. In the suo moto proceedings initiated by the Chairman, DRAT, the following observations are relevant:

".....it is, however, clarified that I found no reason to smell a rat in the passing of the orders dated 15.07.2016 by the Presiding Officer of DRT-II, Chandigarh as was the attempt of the complainant advocate in his complaint as also before me at the time of personal hearing given to him by me....."

26. It is a settled law that the Chairperson, DRAT is not competent to take up suo moto proceedings, as has been held in the case of Smt. Harpreet Kaur and another Vs. M/s Fullerton India Credit company Ltd., 2018 (249) DLT 283 DB and Padam Singhee and another Vs. M/s SVOGL Oil, Gas and Energy Ltd. and others, W.P. (C) 9616/2018, more particularly, paras 19 and 20 of Padam Singhee (supra), which read as under :

19. Surprisingly, contrary to its own view, DRAT has exercised power which it did not possess. Even if the DRAT was to disagree with its earlier view, propriety demands the DRAT to refer the issue to a larger bench (if permissible) for fresh consideration. In this regard, we refer to the judgment of the Supreme Court in the case of Dr. Vijay Laxmi Sadho vs. Jagdish, (2001) 2 SCC 247 wherein the Supreme Court in para 33 has held as under:

"33. As the learned Single Judge was not in agreement with the view expressed in the earlier decision of another Single Judge of that High Court it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. It is noted with regret and distress that the

said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

20. In any case, we are of the view, the issue whether the DRAT / DRT, have powers to suo moto initiate any proceedings is no more res integra in view of the judgment of the Supreme Court in the case of Standard Chartered Bank v. Dharminder Bhohi and Ors. v. (2013) 15 SCC 341 wherein the Supreme Court while considering the provisions of Act of 1993 has, in Paras 33 to 38, held as under:

"33. Section 19 of the RDB Act, occurring in Chapter IV of the Act, deals with procedure of tribunals. Sub-section (25) of Section 19 reads as follows:

"19. (25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

The aforesaid provision makes it quite clear that the Tribunal has been given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Thus, the Tribunal is required to function within the statutory parameters. The Tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers.

34. In this context, we may refer to a three-Judge Bench decision in Upper Doab Sugar Mills Ltd. v. Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. [AIR 1963 SC 217] wherein it has been held that when the tribunal has not been conferred with the jurisdiction to direct for refund, it cannot do so. The said principle has been followed in Union of India v. Orient Paper and Industries Ltd. [(2009) 16 SCC 286]

35. In Union of India v. Madras Bar Assn. [(2010) 11 SCC 1] the Constitution Bench, after referring to the opinion of Hidayatullah, J. in Harinagar Sugar Mills Ltd.v. Shyam Sunder Jhunjhunwala [AIR 1961 SC 1669] , the pronouncements in Jaswant Sugar Mills Ltd. v. Lakshmi Chand [AIR 1963 SC 677] , Associated Cement Companies Ltd. v. P.N. Sharma [AIR 1965 SC 1595] and Kihoto Hollohanv. Zachillhu [1992 Supp (2) SCC 651] , ruled thus: (Madras Bar Assn. case [(2010) 11 SCC 1] , SCC p. 35, para 45)

"45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are:

(i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts. (ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an "expert" in the field to which the tribunal relates. Some highly specialised fact-finding tribunals may have only technical members, but they are rare and are exceptions. (iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act." 36. From the principles that have been culled out by the Constitution Bench, it is perceptible that a tribunal is established under a statute to adjudicate upon disputes arising under the said statute. The Tribunal under the RDB Act has been established with a specific purpose and we have already focused on the same. Its duty is to see that the disputes are disposed of quickly regard being had to the larger public interest. It is also graphically clear that the role of the Tribunal has not been fettered by technicalities. The Tribunal is required to bestow attention and give priority to the real controversy before it arising out of the special legislations. As has been stated earlier, it is really free from the shackles of procedural law and only guided by fair play and principles of natural justice and the regulations formed by it. The procedure of tribunals has been elaborately stated in Section 19 of the RDB Act.

37. It is apt to note here that Section 34 of the SARFAESI Act bars the jurisdiction of the civil court. It reads as follows: "34.Civil court not to have jurisdiction.-No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)." 38. Section 34 of the RDB Act provides that the said Act would have overriding effect. We have referred to the aforesaid provisions to singularly highlight that the sacrosanct purpose with which the tribunals have been established is to put the controversy to rest between the banks and the borrowers and any third party who has acquired any interest. They have been conferred jurisdiction by special legislations to exercise a particular power in a particular manner as provided under the Act. They cannot assume the role of a court of different nature which really can grant "liberty to initiate any action against the bank". They are only required to decide the lis that comes within their own domain. If it does not fall within their sphere of jurisdiction they are required to say so. Taking note of a submission made at the behest of the

auction-purchaser and then proceed to say that he is at liberty to file any action against the bank for any omission committed by it has no sanction of law. The said observation is wholly bereft of jurisdiction, and indubitably is totally unwarranted in the obtaining factual matrix. Therefore, we have no hesitation in deleting the observation, namely, "liberty is also given to the auction purchaser to file action against the bank for any omission committed by it".

27. In the case of Satish Chander Gupta & others Vs. State Bank of India & others, W.P. (C) 2588/2010, the petitioners had sought to make payment through a one-time settlement to the bank and the OTS was accepted by the bank. The amount was paid in full and a No Due Certificate was issued by the bank. To formally place on record the settlement, an application was filed by the bank before the DRT. The tribunal had dismissed the application by a cryptic order and the DRAT dismissed the appeal against the order of the DRT. These orders were challenged before a Division Bench of this Court. The Division Bench noticed that the bank is a dominus litis and it is for the bank to decide as to against which party it desires the litigation to continue. It is purely a contractual matter and the bank in its wisdom has decided to settle the claim on a one-time settlement. The Division Bench had observed that the DRAT was not an auditor of the bank to scrutinize the settlement between the bank and the borrower as this was not the function of the DRAT. The relevant para from the said judgment reads as under:

".....The DRAT appears to think that it is some kind of Ombudsman/Auditor of the bank to scrutinize the settlement arrived at between the bank and the borrower.

This is not the function of the DRAT.

.....The DRAT is no one to decide as to at what value the bank should settle its dues with the borrower especially when the bank has Managers who have acted in pursuance to authorization in their favour and after due consideration of the proposal of the petitioners.

We have no hesitation in stating that both orders of the DRT dated 1.6.2009 and of the DRAT dated 22.12.2009 are completely erroneous in law and suffer from a fallacious approach on the part of the concerned authorities/tribunals and are consequently quashed.

The application filed by the bank being IA No.06/2007 is consequently allowed. The petitioners would, thus, be struck off from the array of parties.

The petition is accordingly allowed leaving the parties to bear their own costs.

A copy of the order be sent to both the concerned officers of the DRT and DRAT.

CM No.5166/2010

In view of the disposal of the writ petition, the application does not survive for consideration and same also stands disposed of."

28. The same observations were made subsequently by another Division Bench in the case of Harpreet Kaur and another Vs. M/s Fullerton India Credit company Ltd., (2018) 249 DLT 283 (DB) in paras 8 and 9. We reiterate that the Chairperson, DRAT does not have power to initiate suo moto proceedings.

29. In the case of Padam Singhee and another Vs. M/s SVOGL Oil, Gas and Energy Ltd. & others, W.P. (C) 9616/2018 which is based on a decision rendered by the Apex Court in the case of Standard Chartered Bank Vs. Dharminder Bhohi and others, 2013 (15) SCC 341, paras 33 to 38 of which, have been relied upon, Division Bench has culled out the powers of the Tribunal and the Appellate Tribunal.

30. A reading of the charge-sheet would show that there is no allegation against the respondent regarding moral turpitude or corruption. The first question, which would arise and has been considered in detail is regarding the extent to which disciplinary action against officers exercising judicial or quasi-judicial powers can be taken.

31. The learned Single Judge in his order dated 25.09.2018 has taken note of the subsequent view taken in the case of Zunjarrao Bhikaji Nagarkar Vs. U.O.I., (1999) 7 SCC 409 wherein, the Supreme Court, dealing with the said aspect observed as follows:

"40. When we talk of negligence in a quasi-judicial adjudication, it is not negligence perceived as carelessness, inadvertence or omission but as culpable negligence. This is how this Court in State of Punjab v. Ex-Constable Ram Singh [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] interpreted "misconduct" not coming within the purview of mere error in judgment, carelessness or negligence in performance of duty. In the case of K.K. Dhawan [(1993) 2 SCC 56 : 1993 SCC (L&S) 325 : (1993) 24 ATC 1] the allegation was of conferring undue favour upon the assessee. It was not a case of negligence as such. In Upendra Singh case [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assessee. The case of K.S. Swaminathan [(1996) 11 SCC 498] was not where the respondent was acting in any quasi-judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the court to see whether they support the charge of the alleged misconduct. In M.S. Bindra case [(1998) 7 SCC 310 : 1998 SCC (L&S) 1812] where the appellant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or mala fide or based on no evidence. Again in the case of Madan Mohan Choudhary [(1999) 3 SCC 396 : 1999 SCC (L&S) 700] which was also a case of compulsory retirement this Court said that there should exist material on record to reasonably form an opinion that compulsory retirement of the officer was in public interest. In K.N. Ramamurthy case [(1997) 7 SCC 101 : 1997 SCC (L&S) 1749] it was certainly a case of culpable negligence. One of the charges

was that the officer had failed to safeguard government revenue. In Hindustan Steel Ltd. case [(1969) 2 SCC 627 : AIR 1970 SC 253] it was said that where proceedings are quasi-judicial penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This Court has said that the penalty will not also be imposed merely because it is lawful so to do. In the present case, it is not that the appellant did not impose penalty because of any negligence on his part but he said it was not a case of imposition of penalty. We are, however, of the view that in a case like this which was being adjudicated upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an opinion that imposition of penalty was not mandatory. We have noticed that the Patna High Court while interpreting Section 325 IPC held that imposition of penalty was not mandatory which again we have said is not a correct view to take. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides.

41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. The record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed "favour" to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.

42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some

extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

(Emphasis supplied)

32. After Nagarkar (supra), a similar controversy arose before the Supreme Court in the case of Union of India Vs. Duli Chand, (2006) 5 SCC 680, which overruled Nagarkar (supra), by placing reliance on Union of India Vs. K.K. Dhawan, (1993) 2 SCC 56.

33. Learned Single Judge has taken note of subsequent decision passed by the Supreme Court comprising three judges in Ramesh Chander Singh Vs. High Court of Allahabad, 2007 (4) SCC 247. The relevant paras of this judgment read as under:

"11. We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality. The appellant officer was well within his right to grant bail to the accused in discharge of his judicial functions. Unlike provisions for granting bail in the TADA Act or the NDPS Act, there was no statutory bar in granting bail to the accused in this case. A Sessions Judge was competent to grant bail and if any disciplinary proceedings are initiated against the officer for passing such an order, it would adversely affect the morale of subordinate judiciary and no officer would be able to exercise this power freely and independently.

12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, the High Court must take extra care and caution.

13. In Ishwar Chand Jain v. High Court of P&H [(1988) 3 SCC 370 : 1988 SCC (L&S) 797 : AIR 1988 SC 1395] this Court observed that while exercising control over subordinate judiciary under Article 235 of the Constitution, the High Court is under a constitutional obligation to guide and protect subordinate judicial officers. An honest and strict judicial officer is likely to have adversaries. If

complaints are entertained in trifling matters and if the High Court encourages anonymous complaints, no judicial officer would feel secure and it would be difficult for him to discharge his duties in an honest and independent manner. It is imperative that the High Court should take steps to protect honest judicial officers by ignoring ill-conceived or motivated complaints made by unscrupulous lawyers and litigants.

14. In *K.P. Tiwari v. State of M.P.*, 1994 Supp (1) SCC 540, where the High Court reversed the order passed by the lower court making remarks about interestedness and motive of the lower court in passing the unmerited order, this Court observed that one of the functions of the higher court is either to modify or set aside erroneous orders passed by the lower courts. Our legal system acknowledges fallibility of judges. It has to be kept in mind that a subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure- contestants and lawyers breathing down his neck. He does not enjoy the detached atmosphere of the higher court. Every error, however gross it may be, should not be attributed to improper motives. The Judges of the High Court have a responsibility to ensure judicial discipline and respect for the judiciary from all concerned. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary if the higher courts express lack of faith in the subordinate judiciary for some reason or the other. That amounts to destruction of judiciary from within.

15. In *Kashi Nath Roy v. State of Bihar*, (1996) 4 SCC 539 this Court observed under a similar circumstance that in our system appellate and revisional courts have been set up with the presupposition that the lower courts in some measure of cases can go wrong in decision-making in law and in fact. The higher courts have been established to correct errors. In cases where intolerable error is pointed out, it is functionally required to correct the error in an appropriate case and in a manner befitting maintaining dignity of the court and independence of the judiciary. The higher court should convey its message in the judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellowed but clear and result oriented and rarely a rebuke.

16. In a series of other cases also, this Court disfavoured the practice of passing strictures or orders against the subordinate officers. (See *Braj Kishore Thakur v. Union of India* [(1997) 4 SCC 65 : 1997 SCC (Cri) 514 : AIR 1997 SC 1157] ; *Alok Kumar Roy v. Dr. S.N. Sarma* [AIR 1968 SC 453] .)

17. In *Zunjarrao Bhikaji Nagarkar v. Union of India*, (1999) 7 SCC 409, this Court held that wrong exercise of jurisdiction by a quasi-judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the judicial officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by virtue of its power under Article 235 of the

Constitution may exercise its supervisory jurisdiction. Nevertheless, under such circumstances it should be kept in mind that the Judges at all levels have to administer justice without fear or favour. Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate judicial officers and subjecting them to severe disciplinary proceedings would ultimately harm the judicial system at the grassroot level.

(Emphasis supplied)

34. Analyzing the decision, the learned Single Judge has held that in the present case, there were no allegations of corrupt motive or malafides and the charge-sheet has been quashed. We find that there is no infirmity in the judgment of the learned Single Judge quashing the charge sheet in view of the fact that no allegations of corruption or malafides have been imputed. The case of the respondent is clearly covered by the judgments of the Apex Court and the Division Bench referred to above and which were relied upon by the learned Single Judge to come to a conclusion that it did. It would be useful to refer to Section 19 (22), 26 and 33 of the Recovery of Debt Due on Banks and Financial Institutions Act, 1993, which read as under :

"19. Application to the Tribunal. -

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate."

"26. Validity of certificate an amendment thereof. -

(1) It shall not be open to the defendant to dispute before the Recovery Officer the correctness of the amount specified in the certificate, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the Presiding Officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending intimation to the Recovery Officer.

(3) The Presiding Officer shall intimate to the Recovery Officer any order withdrawing or canceling a certificate or any correction made by him under sub-section (2)."

"33. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Central Government or against [the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal] or against the Recovery Officer for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder."

35. Perusal of Section 33 above shows that the rationale of the protection given under the said Section is in line with the ratio of the judgments referred above. In case a Central Government Officer or a Presiding Officer of the Tribunal or the Chairman of the Appellate Tribunal take any action, which is in good faith, needless to say he cannot be and should not be subjected to any prosecution or legal proceedings. If we were to hold otherwise, then no court or tribunal would be able to function independently and without any bias or pressures. In the present case the ratio of the above judgments applies with greater vigor as this was the case where by bank had itself entered into a settlement as they were unable to get proper value of the property on auctioning. If two parties to a litigation or a inter se dispute arrive at a settlement, then de hors the fact that the amount in dispute was higher than what is actually settled, the courts have no option but to give effect to the settlement to close the case. In fact, the latest trends of courts have been to settle the matters as far as possible through mediation or otherwise. It would indeed be a travesty of justice if the respondent who only gave effect to a mutual settlement between the parties is charge sheeted for doing his bona fide duty and closing the case solely on the basis of the settlement. We have also enquired from the learned counsel for the appellant if any bank official has been charge sheeted. The answer to the query was in the negative. Hence, in the facts of this case we are of the opinion that the learned Single Judge has rightly quashed the charge sheet and we find no infirmity in the impugned judgment. We may also place on record that both the issuance of the charge sheet against the respondent as well as the present appeal is no more than harassment and victimization to the respondent and we hope that such actions in the future are desisted from.

36. We find no infirmity in the judgment dated 25.09.2018. The LPA is without any merit.

37. Dismissed.

CM APPLs. 29863/2019 (stay) & 29865/2019 (additional documents)

38. In view of the order passed in the LPA, the applications stand dismissed.