

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD).Nos.1459 and 1775 of 2007

M.P.Nos.1 and 1 of 2007

C.M.P.Nos.16025 and 19518 of 2017

The Central Bank of India,
Royapettah Branch,
220, Peters Road,
Chennai - 600 014

.. Petitioner in both CRPs

Vs.

1.The South Indian Bank Ltd,
G.T.Branch, Catholic Centre,
64 Armenian Street,
Chennai - 600 001.

2.Southern Timber Traders,
By its Proprietor, N M Shahul Hameed,
69, Choolai High Road, Choolai,
Chennai - 600 112.

.. Respondents 1 & 2
in both C.R.Ps.

3.Maharaja Forest Products,
by its proprietor M S Haji Mohamed,
168, Sydenhams Road,
Chennai - 600 003.

.. 3rd Respondent in CRP.1775/2007

4. Maharaja Timber Traders,
by its proprietor V.M.Jafarulla,
168, Sydenhams Road,
Chennai - 600 003.

.. 3rd Respondent in CRP.1459/2007

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the order dated 09.04.2007 made in I.N.No.2 of 2007 and M.A.No.11 of 2007, on the file of the learned Debts Recovery Appellate Tribunal, Chennai, confirming the order, dated 15.11.2006 in I.A.No.510 of 2004 in O.A.No.98 of 2003 on the file of the learned Debts Recovery Tribunal II, Chennai.

For Petitioner : Mr.T.M.Hariharan

For 1st Respondent : Mr.Krishna Prasad
for Sarva Bhuvmanan & Asso.

COMMON ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Civil Revision Petitions are filed against the order dated 09.04.2007 made in I.N.No.2 of 2007 and M.A.No.11 of 2007, on the file of the learned Debts Recovery Appellate Tribunal, Chennai, confirming the order dated 15.11.2006 in I.A.No.510 of 2004 in O.A.No.98 of 2003, on the file of Debts Recovery Tribunal-II, Chennai.

2. Shorts facts leading to the revision are that I.A.Nos.509 and 510 of 2004, have been filed, by the 1st defendant, in O.A.Nos.97 and 98 of 2003, seeking permission to lead oral evidence, to substantiate the defence, in the aforesaid O.As. Submissions made before the Debts

Recovery Tribunal are as follows:

"(a) The O.A.Nos.97 of 2003 and 98 of 2003 are connected matters and the facts and principal questions involved in the OAs are same and similar. V.M.S.Jafarulla, the proprietor of 3rd defendant (D3) in O.A.No.97 of 2003, and his brothers V.M.S.Mohammed Sherfudeen and V.M.S.Haji Mohamed, the proprietor of D3 in O.A.No.98 of 2003 and one Asia Banu wife of the said V.M.S.Haji Mohamed, along with a person introduced by them as N.M.Shahul Hameed and as the brother of Asia Banu and projected him as the sole proprietor of 2nd defendant (D2) in both OAs, approached the petitioner in June 1998, for grant of credit facilities. The investigation by Central Bureau of Investigation (CBI) and by the bank has revealed that N.M. Shahul Hameed, projected as the sole proprietor of D2 in the aforesaid OAs, has passed away long ago in January 1996 itself. The aforesaid four persons have acted in collusion and have committed acts of fraud and forgery and impersonation and fraudulent misrepresentation to defraud the petitioner for their personal benefits. Most of the original documents are now in the custody of CBI and hence xerox copies of the same are filed in the OA. The petitioner has also filed OA. 263 of 03 against the aforesaid four persons.

(b) On the representation of the aforesaid persons and by the person introduced by them as N.M.Shahul Hamid, sole proprietor of D2, a sanction was obtained from the bank in December 1998 for DA-LC limit of Rs. 75 lakh in favour of the

D2. At the request of the aforesaid persons and at the request of the person introduced by them as Shahul Hameed, the bank granted the following further limits:-

Fund based Cash Credit (Hypothecation)	-Rs. 20 lakh
Non-fund based Import/Local DA/DPLC	-Rs.100 lakh
(Maximum 120 days)	

(c) The petitioner submits that all the documents executed by the person projected as N.M. Shahul Hameed and as the sole proprietor of D2 are fraudulent and fabricated documents as the said Shahul Hameed had passed away long ago, even in January 1996 itself. Thereafter, VMS Haji Mohamed produced to the petitioner, a Power of Attorney said to be executed by the said N.M. Shahul Hameed in favour of VMS Haji Mohamed dated 26.05.2001.

(d) In so far as, the Letter of Credit in O.A.No.97 of 2003 is concerned, signature of one of the authorised signatories other than that of the Bank Manager has been forged. In so far as, the Letter of Credit involved in O.A.No.98 of 2003 is concerned, signature of both the authorised signatories are forged and the documents are void abinitio and are unenforceable. The 1st respondent(R1) is also aware of the fraud and in fact demanded payment of the Bills drawn under the Letters of Credit without submitting to the petitioner, the original Letters of Credit. In this connection, the petitioner submits that it understands that the beneficiaries of the Letters of Credit, viz., the D3 in O.A.No.97 of 2003 and O.A.No.98 of 2003 on whose behalf the R1 negotiated the Letters of Credit and the Bills, are not

constituents of the R1 bank. In reply to the specific query of the petitioner in its letter dated 02.04.2002, R1 has sent an evasive reply dated 08.04.2002 contending that it is not legally bound to disclose the said details. The admissions of R1 in the OAs, that payment was made by it to D3 in each of the OAs by Manager's cheques, and that the said cheques were presented by D3 through some other bank for realisation would disclose that the D3 in the OAs are not constituents of the R1 bank. The confirmation letters dated 02.01.2002 and 17.01.2002 obtained by R1 from the very same Branch Manager, who had issued the Letters of Credit tainted by fraud will not support the case of the R1. It is not the usual banking practice to approach the same issuing officer for confirmation. The letter dated 02.01.2002, addressed by R1 to the Regional Officer, Chennai of the petitioner for confirmation of Letter of Credit involved in OA 97 of 2003 had been forwarded by R1 to Punjab National Bank and the letter came to be received by the Regional Office of the petitioner only on 31.01.2002. Even before obtaining confirmation from the Regional Office of the petitioner, R1 has acted in undue haste in negotiating the Letter of Credit on 02.01.2002 itself.

(e) Again, as regards the Letter of Credit involved in O.A.No. 98 of 2003, R1 having addressed the Regional Office of the petitioner on 17.01.2002 for confirmation had proceeded with undue haste to negotiate the Letter of Credit immediately without obtaining confirmation. The conduct of the R1 is contrary to banking practice and R1 is guilty of

gross negligence. The involvement of the then Branch Manager of the petitioner in the fraud was subject matter of disciplinary proceedings initiated by the bank and by order dated 02.09.2003, the disciplinary authority finding him guilty, has imposed the punishment of dismissal from Bank's service on the then Branch Manager.

(f) The contention of first respondent that the petitioner has raised the plea of fraud for the first time on 28.02.2002, is incorrect. The Assistant General Manager, Regional Office, Chennai of the petitioner has written to R1 on 11.02.2002 that the matter of opening of Letter of Credit is subject to detailed investigation by the Management. The AGM, Regional Office, Chennai of the petitioner has addressed the R1 on 29.04.2002. The petitioner has addressed the R1 on 14.05.2002 drawing the R1's attention to the letter of the AGM dated 29.04.2002. The Regional Office, Chennai has addressed the R1 on 17.05.2002 and the General Manager, Zonal Office, Chennai has addressed the R1 on 18.05.2002.

(g) R1 is aware that fraud has been perpetrated and CBI has launched an enquiry in the matter. R1 has attempted to demand payment from the petitioner even without producing the original Letters of Credit knowing fully well that payment cannot be demanded without producing the original and that the petitioner is not liable to pay any amount. R1 has negotiated the Letters of Credit on behalf of strangers, not its constituents and the R1 has acted in gross violation of accepted and settled banking practice. Further,

R1 has proceeded to negotiate the Letters of Credit on the same day with undue haste, without waiting for confirmation that has been sought from the Regional Office of the petitioner. Bank has sent a suitable reply to the false claim in the legal notice of the R1. Fraud, Forgery and impersonation have been perpetrated by close relatives including the proprietors of D3 to both the OAs on whose behalf R1 has acted and has negotiated the Letters of Credit even without caring to exercise due caution and diligence. The signatures of both the authorised signatories including the Branch Manager has been forged in the Letter of Credit dated 16.01.2002. The signature of the authorised signatory other than the Branch Manager has been forged in the Letter of Credit dated 02.01.2002. The allegation of R1 that the petitioner has issued the Letter of Credit, confirmed that the documents are in order, made assurance of payment but failed to honour its commitment are unavailing and are denied, when the very Letters of Credit have been obtained by perpetrating fraud and forgery and when the petitioner has been a victim of fraud rendering the transactions void abinitio. As the transactions are vitiated by fraud, the reliance on UCPOC clause will not advance the case of R1 which has been negligent and failed to exercise due care and diligence required to be adopted in such banking transactions.

(h) As the fraud and negligence are alleged by the petitioner, the burden is on the petitioner to prove the same. Petitioner can discharge the burden in this behalf only

by examining the deponent of the proof affidavit filed on behalf of the petitioner and by examining the Officer of the Bank employed in the Royapettah Branch at the relevant time. Further, the petitioner desire to cross-examine the deponent of the proof affidavit filed on behalf of the R1 to bring to light the conduct and negligence of R1. In these circumstances, the OA cannot be carried on by a summary trial. Evidence will have to be let in to establish the case of the petitioner. The evidence being let in will assist the Court in assessing the truth of the rival claims and in resolving the lis between the parties. The petitioner has set out in the petition, the details of the witness to be examined on the side of the petitioner. Accordingly, it is prayed that the IAs may be allowed."

3. Before the Tribunal, the 1st respondent has filed a common counter affidavit, which reads thus,

"(a) In so far as the averments 1 to 6 in the affidavit are concerned, they are borne by records and fait accompli and not germane to the present OA and as such the respondent is not adverting to over the same. As far as the averment in para 7 of the affidavit is concerned, it was not brought to the notice of the respondent at any point of time that one of the signatures other than that of petitioner's Bank Manager has been forged, in so far as the Letter of Credit is concerned in O.A.No.97 of 2003. So also the respondent bank is not aware of the signatures of both the

Authorised Signatories in respect of the Letter of Credit involved in O.A.No. 98 of 2003. Respondent has taken all precautions before negotiating the said Letters of Credit by getting the confirmation from the petitioner's Bank Managers. The respondent is not aware of the fraud. Respective documents were tendered for payment to the, petitioner's bank. In the usual course of its business, respondent negotiated the Letters of Credit tendered by the beneficiaries and the beneficiaries need not be a constituent of the bank.

(b) The averments contained in para 7 of the affidavit regarding payment to the beneficiary are fait accompli and as such, they are not traversed. Respondent, in the usual course of the business, obtained confirmation on 02.01.2002 and 17.01.2002 from the Branch, which issued the Letters of Credit. Respondent came to know about the disciplinary proceedings much later on, viz., after commencement of this proceedings. As regards the averment in para 9, the respondent was not informed either orally or in writing that fraud has been perpetuated. The alleged correspondence dated 31.01.2002 and 11.02.2002 will speak for itself and the petitioner has stated that investigation is going on and it did not disclose about the fraud. The other letters are also to the same effect. In so far as the averment made that Central Bureau of Investigation has launched investigation is fait accompli, which was also after honouring the two Letters of Credit, issued by the petitioner bank. The averment that this respondent has been aware of the fraud and has been

negligent throughout negotiating the transactions is denied and the petitioner is put to strict proof of the same. As the documents were seized by CBI, the same could not be produced.

(c) This respondent is not aware of the death of the proprietor even in January 1996. Though the aforesaid transactions are all within the knowledge of the petitioner, the same has not been brought to the knowledge of this respondent and it came to know of the same from this affidavit. The two Letters of Credit were issued under UCPDC clause and this respondent was not a party to the fraud. First respondent has exercised due care and negotiated on the assurances that the payment will be made on the due date. Averments contained in paras 12 and 13 of the affidavit are denied. The provisions of the Recovery of Debts Due to Banks and Financial Institutions Act 1993, as amended by Ordinance does not provide for Chief Examination. It contemplates only proof affidavit and if a party wants to cross examine, he can do so with the permission of the Tribunal. Hence, in the absence of any provision for Chief examination, the present application filed by the petitioner for chief examining the two persons namely (1) Mr Rukmangada and (2) Mr Selvaraj is not maintainable in law and as such the applications are liable to be dismissed on merits in limine. It is therefore prayed that this Tribunal may be pleased to dismiss the above interim applications with exemplary costs of this respondent."

4. After considering the arguments of both sides, vide order, dated 15.11.2006, in I.A.Nos.509 and 510 of 2004 in O.A.Nos.97 and 98 of 2003, the DRT-II, Chennai, ordered as follows.

"As seen from the proceedings dated 16.06.2005, I.A.Nos.507 and 508 of 2004 filed in both the OAs were allowed and the applicant bank's witness was cross examined and the said cross examination has also been completed vide proceedings dated 29.09.2005. The present applications in I.A.Nos. 509 and 510 of 2004 were also disposed of with an observation that the same can be dealt with after filing the counter proof affidavit. Counter Proof Affidavit by the petitioner along with certain documents were filed in this Tribunal. Hence, the present IAs have been taken up for consideration now.

5. The counsel appearing for the petitioner desires to let in evidence from their side to establish that a fraud has been perpetuated on the petitioner by the defendant No.3 in the main OA and also to establish the negligence on the part of the South Indian Bank Ltd, who is the applicant in both the OAs. As far as negligence on the part of the South Indian Bank Ltd., is concerned, the question need not be dealt with now as the cross examination is already over. As far as the fraud perpetuated upon the petitioner is concerned, it is a matter of record that the erstwhile Manager of the petitioner in Royapettah Branch has been dismissed from

service after an internal enquiry by them. It is further admitted by the petitioner itself that the case relating to this has been handed over to CBI and the same is under investigation. Further, the petitioner has already filed a counter proof affidavit enclosing all the relevant document to support their denial of claim in the main OA. In such circumstances, here is no necessity for letting in evidence from the petitioner's side. Moreover, the Hon'ble Supreme Court of India in the judgment of Union of India Vs. Delhi High Court Bar Association held that oral examination in the cases pending before the Tribunals should be allowed only in the rarest of rare cases. It was further held that, if the affidavits filed on behalf of both the sides found to be insufficient, then only the oral examination should be allowed. It is pertinent to mention herein that the petitioner has already cross examined the South Indian Bank's witness and filed a detailed counter proof affidavit countering the claim in the proof affidavit filed by the said bank. Therefore, there is absolutely no necessity to let in evidence by the petitioner as the relevant documents on record have been filed in this Tribunal.

6. In view of the aforesaid reasons, I do not find any merit in these applications i.e., I.A.No.509 and 510 of 2004. The IAs are liable to be dismissed and hence are dismissed. No order as to costs."

5. Aggrieved by the same, the petitioner has filed M.A.No.11 of 2007 and IN-2/2007 before the Debts Recovery Appellate Tribunal, Chennai and vide common order, dated 09.04.2007, DRAT, Chennai, held as follows:

"3. The Ld. Advocate for the Appellant has taken me through the Affidavit, which was filed before the DRT, wherein it is stated that the then Manager or the Appellant Bank and some other Officer have committed certain frauds, which made the Appellant Bank to incur certain losses also. That only in the said circumstances, the Appellant has chosen to file Applications to examine the Appellant Bank's witness.

4. The Ld. Advocate for the 1st Respondent Bank viz."South Indian Bank, contends that there is no provision either in the Act or in the Rules framed under the RDDB&FI Act, 1993, enabling the person to examine in chief of its own witness and, therefore, the Applications filed by the Appellant is not at all sustainable.

5. The Ld. Advocate for the Appellant has relied upon sub-clause (2) of Section-22 of the Act, to support his submission, that this Tribunal for the purposes of discharging their functions under the Act, has got the same power as are vested in the Civil Court under the Civil Procedure Code (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 (Other sub-clause are not necessary for the purpose of this case). It is, therefore, submitted that this Tribunal has got ample powers to summon any person or any witness to be present and for examination. Appellant also relied upon Rule-12(6) of the DRT (Procedure) Rules, 1993, which states, "*The Tribunal may at any time for sufficient reason order that any particular fact and facts shall be proved by affidavit, or that the affidavit or any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable.*" There is no denial as far as the provisions in Section - 22(2) or Rule-12(6) of the DRT (Procedure) Rules. What all they say is that the Tribunal has got power for the purpose of discharging its functions to summon and enforce the attendance of any person and examining him on oath. Rule-12(6) permits a party to prove the existence of a fact or facts by filing of Affidavit and if it is so, necessary Affidavit of the said witness shall be read at the hearing. Neither sub-clause (2) of Section-22 or Rule-12 (6) permit any party to examine his own witness in chief examination. However, the Ld. Advocate for the Appellant relies upon the decision of the Hon'ble Supreme Court in the case of *Union of India & Another, Appellants Vs. Delhi High Court Bar Association & Others, Respondents - 2002 (2) CTC 106*, wherein certain observations were made in Paras 22 & 23 stating that Rule- 12(6) has got to be read

harmoniously with the other provisions of the Act and Rules and, therefore, the Appellant is entitled to examine his own witness in chief.

6. I have carefully gone through the decision rendered by the Hon'ble Supreme Court and what all it says is, "The proviso to Rule 12(6) would certainly apply only where the Tribunal chooses to issue a direction, on its own, for any particular fact to be proved by affidavit or the affidavit of a witness being read at the hearing. The said proviso refers to the desire of an applicant or defendant for the production of a witness for cross-examination. In the setting in which the said proviso occurs, it would appear to us that once the parties have filed affidavits in support of their respective cases, it is only thereafter that the desire for a witness to be cross-examined can legitimately arise. It is at that time, if it appears to the Tribunal that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case that it shall require the witness to be present for cross-examination and in the event of his not appearing, then the affidavit shall not be taken into evidence." This only suggests and means that an opportunity is given to a party either to the applicant or to the defendant in the OA, to cross-examine a witness, who has filed the Affidavit on oath and I am not for a minute, able to understand that there is an enabling provision to examine his own witness in the examination in chief. My reading of this Judgement

would make me to think that there is no such provision and the Ld. Advocate for the Appellant is also not able to point out any other provision except this, and this provision does not enable a person to examine in chief of his own witness, who has filed the Affidavit. What all it states is that the Affidavit filed by the party can be read in the hearing and there is no room for examining his own witness in the chief-examination. But on the other hand, the rights of the parties is very jealously guarded in the Delhi High Court Bar Association case, wherein it is stated that the adversary is entitled to cross-examine a witness, if a case has been made out for cross-examination as adumbrated in Paras-22 & 23 of the Judgement. But this Judgement does not provide a party to examine his own witness in the chief examination and that, therefore, the prayer of the Appellant cannot at all be granted. I feel that out of anxiety, the Applicant/Appellant has filed these Applications as they have repeatedly stated in the Affidavit that there was a fraud committed by their Bank and thus they would not be able to prove their case. If that be so, the Appellant is at liberty to make his submission before the DRT and work out his remedy in a manner known to law. But the present Applications, according to me, is not sustainable. In the above said circumstances, I do not find any good and valid reasons to interfere with the Order passed by the DRT.

7. In the result, the Appeals are dismissed."

6. Being aggrieved by the same, Civil Revision Petitions have been filed, contending inter alia that the borrower can establish fraud, only by examining the person, who has knowledge of the same and employed in the branch, at the relevant time, and by eliciting answers on oath, with reference to the forged documents, and the cumulative events, which vitiate the transactions with the Bank, but the Appellate Tribunal has failed to exercise its jurisdiction, lawfully vested in it, and acted with material irregularity, in confirming the order of dismissal of the application, filed by the petitioner, for examination in chief of the witnesses.

7. Mr.T.M.Hariharan, learned counsel for the petitioner further contended that the Appellate Tribunal has failed to consider that Section 22(2)(a) of the Recovery of Debts Due to Banks and Financial Institutions Act, enables the Tribunals to summon and enforce the attendance of any person and to examine him on oath. Placing reliance on a decision in **Union of India v. Delhi High Court Bar Association** reported in **2002 (4) SCC 275**, he submitted that Rule 12(6) of the Rules, does not prevent examination of a witness-in-chief, and the said Rule has to be read harmoniously with the other provisions of the Act. Therefore, he contended that the reasoning of the Tribunal that there is no provision

enabling a party to examine its own witness orally in chief, is contrary to the provisions of the Act and the Rules framed thereunder and therefore, the findings of the Tribunal that the said rule only enables cross-examination, is contrary to the intent of Act and the Rules framed.

Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Before advertng to the rival contentions, let us extract Rule 12(6) of the Debts Recovery Tribunal (Procedure) Rules, 1993,

"(6) The Tribunal may at any time for sufficient reason order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable:

Provided that after filing of the affidavits by the respective parties where it appears to the Tribunal that either the applicant or the defendant desires the production of a witness for cross- examination and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross-examination, and in the event of the witness not appearing for cross- examination, then, the affidavit shall not be taken into evidence and further that no

oral evidence other than that given in this proviso will be permitted."

9. Reading of the abovesaid provision makes it clear that the tribunal can, at any time for sufficient reason, order that any particular fact may be proved by way of affidavit. Proviso to this sub-rule states that after filing of the affidavits by the respective parties, where it appears to the Tribunal that, either the applicant or the defendant desires the production of a witness, for cross-examination, and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross-examination, and in the event of the witness not appearing for cross-examination, then, the affidavit shall not be taken into evidence and further that no oral evidence other than that given in this proviso will be permitted.

10. As per Rule 12 of the Debts Recovery Tribunal (Procedure) Rules, 1993, the defendant may file two complete sets containing the reply to the application along with documents in a paper book form with the registry within one month of the service of the notice of the filing of the application on him. The defendant shall also endorse one copy of the

reply along with documents as mentioned in sub-rule (1) to the applicant. The Tribunal may, in its discretion on application by the respondent, allow the filing of reply referred to in sub-rule (1), after the expiry of the period referred to therein. If the defendant fails to file the reply under sub-rule (1) or on the date fixed for hearing of the application, the Tribunal may proceed forthwith to pass an order on the application as it thinks fit. Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission, by the applicant within a period of one month from the date of such order failing which the Tribunal may issue a certificate in accordance with section 19 of the Act to the extent of amount of debt due admitted by the defendant.

11. Material on record discloses that examination of Bank's witness, has been completed on 29.09.2008, and that a counter proof affidavit has been filed by the petitioner and relevant documents were already on record. Tribunal has recorded that there is no provision in RDBI Act, 1993, enabling the person, to examine in chief of its own witness. Chief examination has been dispensed with, by filing proof affidavit, with documents, and counter proof affidavit is filed, after filing the written

statement. Rule 12(6) permits a party to prove the existence of a fact or facts by filing of Affidavit and if it is so, necessary Affidavit of the said witness shall be read at the hearing.

12. In **Union of India and Another v. Delhi High Court Bar Association and Others** reported in (2002) 4 SCC 275, the Hon'ble Supreme Court, at Paragraph 23, held as follows:

"23. In other words, the Tribunal has the power to require any particular fact to be proved by affidavit, or it may order that the affidavit of any witness may be read at the hearing. While passing such an order, it must record sufficient reasons for the same. The proviso to Rule 12(6) would certainly apply only where the Tribunal chooses to issue a direction on its own, for any particular fact to be proved by affidavit or the affidavit of a witness being read at the hearing. The said proviso refers to the desire of an applicant or a defendant for the production of a witness for cross-examination. In the setting in which the said proviso occurs, it would appear to us that once the parties have filed affidavits in support of their respective cases, it is only thereafter that the desire for a witness to be cross-examined can legitimately arise. It is at that time, if it appears to the Tribunal, that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case that it shall require the witness

to be present for cross-examination and in the event of his not appearing, then the affidavit shall not be taken into evidence. When the High Courts and the Supreme Court in exercise of their jurisdiction under Article 226 and Article 32 can decide questions of fact as well as law merely on the basis of documents and affidavits filed before them ordinarily, there should be no reason as to why a Tribunal, likewise, should not be able to decide the case merely on the basis of documents and affidavits before it. It is common knowledge that hardly any transaction with the bank would be oral and without proper documentation, whether in the form of letters or formal agreements. In such an event the bona fide need for the oral examination of a witness should rarely arise. There has to be a very good reason to hold that affidavits, in such a case, would not be sufficient.”

13. When the legislature has only contemplated cross-examination, whether it would be open to the Court to add words to the legislature to include chief examination also, we deem it fit to consider few decisions,

(i) In **CIT v. Badhraj and Company** reported in **1994 Supp (1) SCC 280**, the Hon'ble Apex Court held that the object oriented approach, however, cannot be carried to the extent of doing violence to the plain

meaning of the Section used by rewriting the Section or substituting the words in the place of actual words used by the legislature.

(ii) In **Dadi Jagannadham v. Jammulu Ramulu** reported in (2001) 7 SCC 71, the Hon'ble Supreme Court held that,

“13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.”

(iii) In **Nasiruddin v. Sita Ram Agarwal** reported in (2003) 2 SCC 577, the Hon'ble Supreme Court held as follows:

“35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in

a different manner, only because of harsh consequences arising therefrom....

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

(iv) In *Institute of C.A. of India v. Ajit Kumar Iddya* reported in AIR 2003 Kant. 187, the Karnataka High Court held that, "So far as the cardinal law of interpretation is concerned, it is settled that if the

language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the Court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own.”

(v) In *Indian Dental Association, Kerala v. Union of India* reported in 2004 (1) Kant. LJ 282, the Court held that,

“The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it,

whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected.”

(vi) In *State of Jharkhand v. Govind Singh* reported in (2005) 10 SCC 437, the Hon'ble Supreme Court held that,

“12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the “language” is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used

the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes *functus officio* so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by “an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so”. (See Frankfurter: “*Some Reflections on the Reading of Statutes*” in *Essays on Jurisprudence*, Columbia Law Review, p. 51.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd. v. Sirs* [(1980 (1) All.ER 529] (All ER at p.542c-d):

“It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest.

19. In *D.R. Venkatachalam v. Dy. Transport Commr.* [1977 (2) SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.”

(vii) In *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, reported in (2008) 4 SCC 755, the Hon'ble Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

“52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.

54. Thus, in *Surjit Singh Kalra v. Union of India*, this Court has observed that sometimes courts can supply words which have been accidentally omitted.

55. In G.P. Singh's *Principles of Statutory Interpretation*, 9th Edn., 2004 at pp. 71-74 several decisions of this Court and foreign courts have been referred to where the court has added words to a statute (though cautioning that normally this should not be done).

56. Hence we have to add the aforementioned words at the end of Section 175 otherwise there will be an irreconcilable conflict between Section 174 and Section 175.”

(viii) In *Phool Patti v. Ram Singh* reported in (2009) 13 SCC 22, the Hon'ble Supreme Court held that,

“9. It is a well-settled principle of interpretation that the court cannot add words to the statute or change its language, particularly

when on a plain reading the meaning seems to be clear.”

(ix) In *Mohd. Shahabuddin v. State of Bihar*, reported in (2010) 4 SCC 653, the Supreme Court held that,

“179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal Properties & Industries Ltd. v. State of Haryana* [2009 (3) SCC 553]

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the

condition to be applied at some other place in that provision.”

14. Upon examining the rival contentions, DRAT, Chennai, has rightly observed that there is no provision, enabling a person to examine his own witness, who has filed the affidavit. Though it was contended that a fraud committed by the Bank, as observed by the Hon'ble Supreme Court in **Delhi Bar Association's** case (cited supra), it is always open to the petitioner to prove their case, by filing necessary documents, before the Tribunal and to cross-examine the bank witness, which in the instant case, has been done.

15. Giving due consideration to the above decisions, we are in agreement with the reasoning of the Debts Recovery Tribunal II, Chennai and Debts Recovery Appellate Tribunal, Chennai, on the abovesaid issue. Hence, both the order, dated 09.04.2007 made in I.N.No.2 of 2007 and M.A.No.11 of 2007, on the file of the learned Debts Recovery Appellate Tribunal, Chennai and the order, dated 15.11.2006 in I.A.No.510 of 2004 in O.A.No.98 of 2003 on the file of the learned Debts Recovery Tribunal II, Chennai, are confirmed.

S.MANIKUMAR, J.
AND

V.BHAVANI SUBBAROYAN, J.

skm

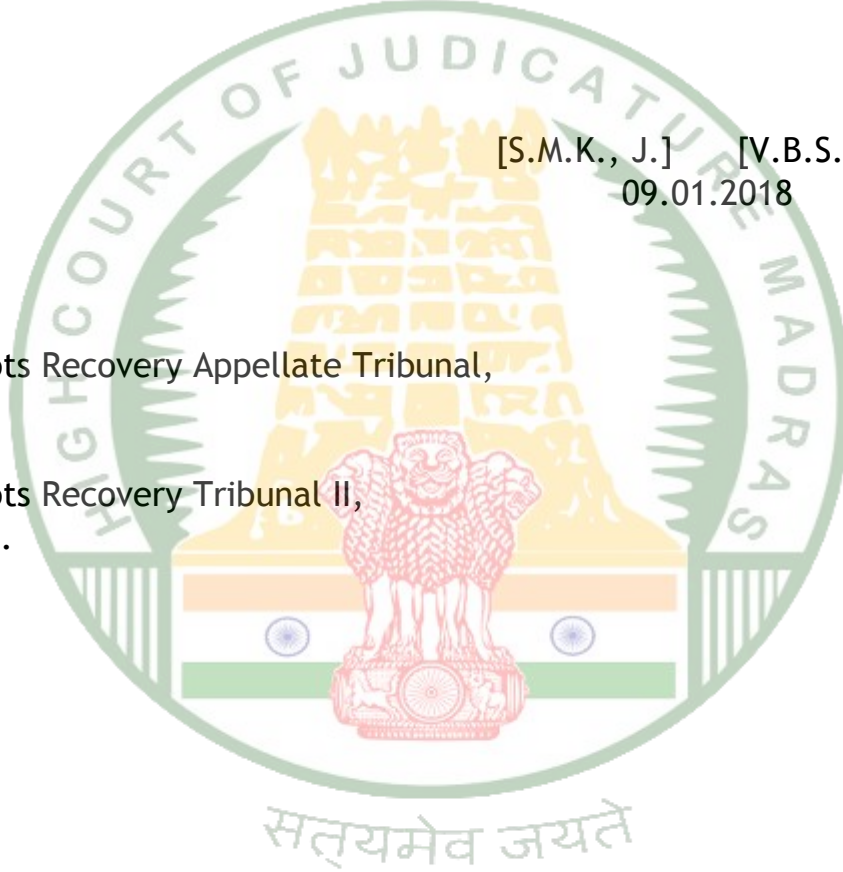
16. In the result, both the Civil Revision Petitions are dismissed.

No costs. Connected Miscellaneous Petitions are closed.

[S.M.K., J.] [V.B.S., J.]
09.01.2018

skm/dm
To

1. The Debts Recovery Appellate Tribunal,
Chennai.
2. The Debts Recovery Tribunal II,
Chennai.



WEB COPY

C.R.P.(PD).Nos.1459 and 1775 of 2007