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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9951/2018, CM No. 38761/2018

M/S PATNA BAKHTIYARPUR TOLLWAY LIMITED AND ORS.

..... Petitioners

Through: Ms. Amrita, Adv. with Mr. Prashant, Adv.

versus

ICICI BANK LIMITED AND ORS. ..... Respondents

Through: Mr. Manish Bishnoi, Adv. with Mr. R.P. Agrawal, Mr. Sunny Verma & Ms. Tanvi Sapra, Advs. for ICICI Bank

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% 28.09.2018

1. The challenge in this writ petition is to the order dated August 24, 2018 passed by the DRAT in Misc. Appeal No. 400/2018 whereby the DRAT has issued a show cause notice to the petitioner Companies as to why orders as contemplated under Section 19(18) and 19(25) of Recovery of Debts and Bankruptcy Act, 1993 and Financial Institutions Act, 1993 ("RDDB & FI Act" in short) be not passed for appointment of receivers for taking over physical possession of all the unencumbered properties and also to disclose all their bank accounts; filing affidavit giving amounts lying in their bank accounts restrained them from withdrawing any money from their accounts.

2. It is the case of the petitioner Companies herein that the respondent No.2 had borrowed loan from the respondent No.1. The borrower respondents No.2 and respondent No.3 hold shares of the petitioner Companies. The respondent No.1 Bank filed an Original Application on August 02, 2016 before the DRT. The matter was taken up for consideration by the DRT on February 21, 2018 after a lapse of more than 18 months, when the respondent No.1 Bank pressed for interim relief against the respondents. The petitioner Companies filed their written statement to the Original Application on July 02, 2018. Suffice it to state, the respondent No.8 herein had preferred interim applications being IA Nos. 820/2018 and 847/2018 seeking permission to travel abroad. It appears, on June 25, 2018, the DRT passed order in IA Nos. 820/2018 and 847/2018 granting permission to the respondent No.8 to travel abroad.

3. Aggrieved by the order dated June 25, 2018 passed by the DRT, the respondent No.1 Bank preferred Misc. Appeal No. 400/2018 on August 10, 2018 before the DRAT. It is the case of the petitioner Companies in the said appeal, the respondent No.1 Bank has not made any allegation or sought any prayer against the petitioner Companies since the scope of challenge therein was limited to granting permission to the respondent No.8 to travel abroad.

4. It is the case of the petitioner Companies that on August 24, 2018 (impugned order), the DRAT directed the attachment of their bank accounts and issued show cause notice to them under Section 19 (18) RDDB & FI Act for appointment of receiver qua the properties of the petitioner Companies, even though, the petitioner Companies are neither the borrowers nor guarantors and no allegations were made against the petitioner Companies in the said appeal. It may be stated here that after August 24, 2018, the matter was listed on September 13, 2018 wherein the Tribunal directed the respondent No.1 Bank to provide copy of the appeal to the petitioner Companies and also granted time for filing reply to the appeal and to the show cause notice in furtherance of order dated August 24, 2018.

5. The learned counsel for the petitioner Companies reiterated the stand of the petitioners in her oral submissions that admittedly the petitioners are neither the borrowers nor guarantors in the transaction in question and the impugned order could not be made applicable to them especially when the appeal was preferred against grant of permission to the respondent No.8 to travel abroad.

6. It is also her submission that the DRAT had exceeded its jurisdiction whereas it should have limited the scope of Misc. Appeal only to testing the

validity of the order dated June 25, 2018 of the DRT. It is contended that the DRAT failed to appreciate that the power of appointment of receiver rest only with the learned DRT as envisaged under Section 19(18) read with Section 2(a) and 2(o) of the RDDB & FI Act and in the present case since the Original Application is at the stage of exhibition of documents and the petitioner Companies are duly attending the proceedings, no such occasion has arisen for the DRAT to exercise such a power.

7. On the other hand, Mr. Bishnoi, who appears for the respondent No.1 Bank would contend that when huge amount of money is due to the Bank, the DRAT was justified in taking recourse to such a procedure. He concedes to the fact that interim reliefs have been sought by the respondent No.1 Bank before the DRT as seen from pages 79 to 84 of the writ petition.

8. Having heard the learned counsel for the parties, the issue which arises for consideration is, whether the DRAT can issue a show cause notice to the petitioner Companies as to why orders as contemplated under Section 19(18) and 19(25) of RDDB & FI Act be not passed for appointment of receivers for taking over physical possession of all the unencumbered properties and calling upon the petitioner Companies to disclose bank accounts wherever they are maintained and the money lying therein and

restraining them from withdrawing any money from any of their accounts, when subject matter of appeal is only the order dated June 25, 2018, passed by the DRT in favour of respondent No.8. There is no dispute that the Misc. Appeal No. 400/2018 has been filed by the respondent No.1 Bank against the order dated June 25, 2018. The order dated June 25, 2018 reads as under:-

*"**IA No. 847/2018***

This application has been filed on behalf of defendant no.7 for seeking permission to travel abroad as per the itinerary, as mentioned in Para 3 of IA.

Ld. Counsel for applicant bank submits that he has filed written submissions to this IA vide diary no.5678 today itself. Same is available on record.

IA No. 820/2018

This application has also been filed on behalf of defendant no. 7 for seeking permission to travel abroad as per the itinerary, as mentioned in Para 3 of IA.

Ld. Counsel for defendant No.7 submits that in compliance of order dated 26.5.2018 of this Tribunal, she has filed complete details of the bank accounts, mutual funds details, and details of insurance policies vide diary no. 5676 today itself. Same is available on record.

In the light of Judgement of Hon'ble High Court in the matter of Kapil Puri & Ors v. ICICI Bank Ltd. IV(2015)BC 134 and since defendant no. 7 has complied with directions of this Tribunal, hence for interim measures, defendant no. 7 is permitted to travel abroad as per itinerary as mentioned in Para 3 of both t4he IAs i.e. IA No. 847/2018 & 820/2018.

Both the IAs would be heard on next date of hearing meanwhile, re-list the case before Ld. Registrar on the date already fixed i.e. on 4.7.2018. Now the date already fied i.e 26.6.2018 is hereby cancelled."

9. So, it is clear, the subject matter of the appeal before the DRAT is the order dated June 25, 2018 whereby the permission has been granted by the DRT to respondent No.8 to travel abroad and not the petitioner Companies herein. In view of the limited scope of the appeal, the DRAT could not have issued the show cause notice to the petitioner Companies on an issue, which was not a subject matter of the appeal. This Court had an occasion to consider the issue whether the DRAT / DRT can in purported exercise of *suo moto* power in public interest issue such a show cause notice. The conclusion of this Court is in the following manner:-

> *"9. That apart, the show cause notice to the petitioners for passing orders as contemplated under Sections 19(13)(A) and 19(18)(25) of the Act of 1993, including appointment of receiver of their assets, suo moto purported to be in public interest could not have been issued. This we say so, because, as noted / held by this Court in* ***Prem Kumar Gupta vs. Bank of India 2015 SCC Online 8232,*** *that the Act of 1993, was enacted to provide for the establishment of Tribunals "for expeditious adjudication and recovery of debts" due to banks and financial institutions.*
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> *10. It was held by the Coordinate Bench of this Court in* ***Prem Kumar Gupta (supra)*** *that the Act of 1993 created, by Section*

3, Debts Recovery Tribunals conferring upon them, by virtue of Section 17, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions "for recovery of debts" due to them. The Appellate Tribunal constituted under Section 8 of the Act of 1993, can only (under Section 17) exercise jurisdiction, powers and authority to entertain appeals against any order made or deemed to have been made by a Tribunal under the Act, and not in any other manner. Further, the power of the Chairperson of Appellate Tribunal is of general superintendence over the Tribunals and power to transfer of cases from one Tribunal to the other and nothing more. The procedure of such Tribunals is prescribed in Section 19.

11. It was held that various clauses contained in Section 19 shows that the status of DRT is akin to that of a civil court entertaining a civil cause brought for recovery of money. Shifting the jurisdiction for adjudicating upon a claim for recovery of money (which would ordinarily lie before a civil court) to the DRT in the cases where the claimant is a bank or a financial institution, the trial forum as indeed the DRAT, have been conferred, by virtue of Section 22, "powers to regulate their own procedure". Section 22(1) declares that these forums "shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908" but adds that they shall be "guided by the principles of natural justice". To enable the DRT, and DRAT, to discharge their functions under the Act", they have been bestowed, by Section 22(2), with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908" while trying a suit, inter alia in respect of the following matters:-

"(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;
(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
(h) any other matter which may be prescribed."

12. Similarly, it was held that while entertaining an application for recovery of a debt presented by a bank or a financial institution, the DRT is required to follow the procedure set out at length in Section 19. Thus, the DRT issues "summons", under Section 19(4), "requiring the defendant to show cause" as to why the relief prayed for should not be granted. The defendant is given ordinarily a period of 30 days from the date of service of summons to submit his "written statement" of defence. The period can be enlarged in terms of the proviso appended to the said sub-section. Just as in a civil suit the defendant may claim set off [under Section 19(6)] or set up a counter claim [under Section 19(8)].

13. It was held that a civil court while dealing with money suit is vested with the power and jurisdiction to grant interlocutory orders, in terms of Order 39 of the Code of Civil Procedure, amongst others, to protect the subject matter of the dispute or to preclude the suit property from being wasted, damaged or alienated, thereby causing injury to the claimant (plaintiff) or defraud the creditors etc. Order 38 of the Code of Civil Procedure empowers the civil court to order the defendant to furnish security for production of his property to the extent it would be required to satisfy the decree that may be passed against him if it is shown at any stage of the suit that the defendant with the intent to obstruct or delay the execution of such decree is about to dispose of his property or to remove it beyond the jurisdiction of the court. The civil court is further bestowed with the authority by virtue of provisions contained in Order 38 to proceed to direct the property of the defendant to be attached in the event of the defendant failing to show cause as to why he should not furnish security or failing to furnish such security when required to do so. Order 38 further empowers the *civil court the jurisdiction to direct a defendant to furnish security for his appearance, even before the judgment is rendered, if it is shown to the satisfaction of the Court that in order to cause delay or avoid the process of the Court or obstruct or delay the execution of a decree that may be passed against him, he has absconded or is about to abscond from the local limits of the jurisdiction of the Court. Order 40 of the Code of Civil Procedure permits a civil court to appoint a receiver of the property in dispute; "whether before or after decree", the prime objective again being to ensure that the claim under adjudication is not frustrated by intentional acts of commission or omission of the defendant.*

14. It was held that provisions similar to those mentioned above are made vis-à-vis the procedure applicable to DRT, by sub-sections (12) to (18) of Section 19 of Act of 1993, as under:

> *"(12) The Tribunal may make an <u>interim order</u> (whether by way of <u>injunction or stay or attachment</u>) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.*
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> *(13) (A) <u>Where</u>, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that <u>the defendant</u>, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,-*
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> *(i) <u>is about to dispose of the whole</u> or any part of his property; or*
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> *(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or*
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> *(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, <u>the Tribunal may direct</u> the defendant, within a time to be fixed by it, either <u>to furnish security</u>, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal,*

when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of the debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order-

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or

custody of the property;
(c) commit the same to the possession, custody or management of the receiver;
(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and
(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof." (emphasis supplied)

15. It was held that the litigation brought before a Debts Recovery Tribunal essentially involves a civil dispute. It concerns primarily the claim of a bank or a financial institution to "a debt" which it seeks to recover from the person impleaded as a defendant. In dealing with such an application instituted before it by a bank or financial institution, the DRT may not be strictly bound by the procedure laid down in the Code of Civil Procedure or may have been vested with the power to regulate its own procedure. But there is nothing in the statutory provisions to indicate that the procedure which DRT adopts may be what it fancies.

16. It was held that the provisions contained in sub-section (12) to (18) of Section 19 of Act of 1993 dealing with the interim orders including for attachment of property, furnishing of security, appointment of receiver etc. are not available to the DRT unless a case is made out for their invocation. The Tribunal is not vested with a general power to direct a defendant to furnish security or in case of default on his part to order attachment of his property. There is indeed no power conferred by the statute on the Tribunal to ask the defendant to deposit the amount claimed in the application under Section 19 *before the claim is adjudicated upon. In analogous circumstances, taxing statutes enjoin assessees to deposit finally determined amounts as condition precedent for hearing and deciding appeals; yet such pre-deposit is not authorized at the stage of determination by the Tribunal or authority of first instance. It follows that the Tribunal has no jurisdiction to demand of the defendant a pre-deposit, even of a part of the claimed amount, as a condition precedent, during the process of adjudication on the claim only because delay has occurred in the appearance of the defendant in response to the process issued under Section 19(4). Further, no adverse order can be passed against a defendant for reasons attributable to the co-defendant, unless there is material showing concert.*

17. Section 20 of the Act of 1993 stipulates appeal to the Appellate Tribunal. The Appellate Tribunal can only entertain appeal, which is filed before it under Section 20. There is no other procedure contemplated under this Act for filing proceedings before the Appellate Tribunal.

18. We note that the very same DRAT in the case of ***Bhangoo & Company v. Mittal & Garg Enterprises & Anr. 1 (2006) BC 112 (DRAT/DRT)*** *has inter alia held that the Tribunal cannot exercise suo moto powers interfering with the action resulting in prejudice being caused to the appellant before it in that case. In Para 11, the DRAT has held as under:*

> *"11. Firstly, I must say that these Debts Recovery Tribunals are constituted under the provisions of the RDB Act, 1993. The powers to be exercised by the Tribunals arc distinct from the powers to be exercised by the Hon'ble Supreme Court and the Hon'ble High Courts which are constitutional Courts and are vested with plenary powers also. I must record hereunder that the Tribunals functioning under the RDB Act are not vested with such plenary powers, but derive their powers only under the RDB Act, 1993.I have not come across a provision under the RDB Act, 1993 which confers suo motu powers or nor semblance of*

conferment of such powers could be gathered from the entire text of the Act. Though Section 22 of the RDB Act provide that the Tribunal and the Appellate Tribunal shall not be bound by procedure laid down in CPC but shall be guided by the principles of natural justice and subject to other provisions of the Act and Rules and shall have the power to regulate their own procedure including places at which they shall have their sittings, I do not think this provision could be interpreted to say that the Tribunals have suo motu powers. I am, therefore, inclined to say that the view taken by the Tribunal that it can exercise suo motu powers to interfere in a given case, may not be a correct position."

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:*
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> *"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."*
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> *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.*
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> *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".*

21. From the reading of the aforesaid paragraphs of the judgement of the Supreme Court, it is clear that:
(1) The Tribunal / DRAT does not have inherent powers and even Section 19 (25) confers limited powers.
(2) The power of the Tribunal / DRAT under Section 19(25) is limited to pass such other orders and give such directions to give effect to the orders or to prevent abuse of its process or to secure the ends of justice.
(3) Courts established by the State are entrusted with the State's inherent judicial power for administration of justice in general. The Tribunal / DRAT having been established under a statute to adjudicate upon disputes arising under the said statute or disputes of a specialised nature by regulating the procedure, applying the provisions of CPC only where it is required.
(4) The Tribunal / DRAT are required to function within the statutory parameters.
(5) The Tribunal /DRAT have been conferred jurisdiction by special statute to exercise a particular power in a particular manner as provided under the Act.

(6) The Tribunal / DRAT are required to decide the lis that come within their domain.

22. A Coordinate Bench of this Court also in the case of Prem Kumar Gupta v. Bank of India 2015 SCC Online Del 8232 in W.P.(C) 2630/2014 decided on 9th March, 2015 has, by referring to the judgment of the Supreme Court in Standard Chartered Bank (supra), in paras 23 to 29 held as under:

> *"23. The litigation brought before a Debts Recovery Tribunal essentially involves a civil dispute. It concerns primarily the claim of a bank or a financial institution to "a debt" which it seeks to recover from the person impleaded as a defendant. In dealing with such an application instituted before it by a bank or financial institution, the DRT may not be strictly bound by the procedure laid down in the Code of Civil Procedure or may have been vested with the power to regulate its own procedure. But there is nothing in the statutory provisions to indicate that the procedure which DRT adopts may be what it fancies.*
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> *24. As noted earlier, Section 22(2) confers upon DRT, and DRAT, certain specific powers vested by the Code of Civil Procedure in the Civil court. These include the power to enforce the attendance of a person. But the rider is that the attendance being enforced must be with the objective of "examining him on oath". Necessarily, a person required to attend to be examined on oath would be a person called as a witness and not a party to the suit.*
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> *25. The clauses (f) and (g) of Section 22(2) leave no room for doubt that for regulating the appearance of parties and consequences of their non-appearance, DRT (and DRAT) are to be guided generally by the provisions contained in order 9 of the Code of Civil Procedure. If the applicant under Section 19 fails to appear, the application may be dismissed in default.*

Conversely, if the defendant, duly served, does not appear, the proceedings on the application under Section 19 may be held ex parte. An application dismissed in default may be restored upon application being made on sufficient cause being shown for such order to be set aside. Similarly, the defendant having been set ex parte, may join the proceedings and may be permitted to participate and ex parte proceedings being set at naught subject of course to sufficient cause being shown for earlier non-appearance. This power also extends to setting aside of a judgment rendered ex parte resulting in the hearing on the application being reopened.

26. The forums constituted under RDDBFI Act are not criminal courts. To put simply, they do not adjudicate upon criminal causes or criminal charges. There is nothing in the provisions of the statute which establishes them to show that they are vested with any powers of the criminal court. These tribunals are expected to follow and be guided by the principles of natural justice. Their obligation is to ensure that no one is condemned unheard. Their application is to ensure that the dispute brought before them is adjudicated upon after both sides have been given proper "opportunity of being heard". It is inherent in this that, having issued summons to the defendant in terms of Section 19(4), the Tribunal must ensure that the process is duly served. The prime objective of summons is to give opportunity to the defendant "to show cause" as to why relief prayed for should not be granted. If the defendant, duly served, chooses not to appear, he suffers the proceedings ex parte. The Tribunal is within its jurisdiction to set such a defendant ex parte and proceed further towards adjudication on the basis of the pleadings and material brought before it by the applicant. There is no power vested in the Tribunal to compel or enforce *the attendance of the defendant at the stage of adjudication on the claim under Section 19, not the least by issuing a warrant of arrest or for such duress process to be executed through the agency of police. It may be added that there is, generally speaking, no obligation on the part of one defendant to "ensure" the appearance of a co-defendant, unless there is material to show collusion or one is the agent (or principal) of the other.*

27. The provision contained in Section 19(25) of RDDBFI Act has been referred by the DRAT in the impugned order. The clause reads as under :
"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."

28. In the specific context of Section 19(25) of RDDBFI Act, the Supreme Court in the case reported as Standard Chartered Bank V. Dharminder Bhohi [Judgments Today (2013) 13 SC 69] held that the Debts Recovery Tribunal is required to function within statutory parameters and that "the Tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers".

29. We do not approve of the observations of DRAT that the above noted clause Section 19(25), confers upon the DRT a jurisdiction akin to the one vested in the High Court under Section 482 of the Code of Criminal Procedure. The language employed in the two provisions may be similar but the import thereof cannot be equated. The provision in Section 19(25) may at best be compared with the one contained in Section 151 of the Code of Civil Procedure which saves the "inherent power" of the civil court to secure ends of justice or make orders to prevent abuse of the

> *judicial process. It is trite that such inherent jurisdiction to render justice cannot be taken resort of so as to nullify the other statutory provisions put in position to regulate the procedure. Where the legislation deals expressly with a particular matter, the provisions so enacted would normally be regarded as exhaustive."*

10. We are of the view that the issue, which arises for consideration is covered by the aforesaid judgment. The show cause notice issued to the petitioner Companies by the DRAT on August 24, 2018 is liable to be quashed. Ordered accordingly. The writ petition is allowed, so far as it pertains to the petitioner Companies. No costs.

CM No. 38761/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 28, 2018/*ak*