

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 2321 of 2021

**Tirupati Marketing & Anr.
Vs
State Bank of India**

For the Petitioners : Mr. Debojyoti Saha
Mr. V.V.V. Sastry
Mr. Tridib Bose

For the Opposite party : Ms. Deblina Lahiri
Ms. Teresa Chetri

Heard on : 15.12.2022

Judgment on : 10.02.2023

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order dated 23rd November, 2021 passed by the presiding officer, Debts Recovery Tribunal-I, Kolkata in O.A. No. 31 of 2000, present application under Article 227 of the Constitution of India has been preferred. The petitioner contended that the opposite party instituted a proceeding under section 19 of the Recovery of Debts due to Banks

and Financial Institutions Act 1993 (hereinafter called as Act of 1993) in the learned Debts Recovery Tribunal Kolkata, seeking recovery of a principal sum of Rs. 53,70,369.16 with interest thereon aggregating to a total amount of Rs. 84,09,627.16. The opposite party instituted the said proceeding, seeking refund of the working capital finance/packing credit facility cum foreign bill discounting limit. The opposite party had on or about 5th October 1995 sanctioned an export packing credit facility/foreign bill discounting limit of Rs. 60,00,000/- in favour of the petitioner no.1. In lieu of such facility received by the petitioner no.1, the petitioner nos. 2 had given their personal guarantee and had provided collateral security. At the request of the petitioner no. 1, the credit facility under the foreign bill discounting limit was enhanced to a sum of Rs. 100,00,000/- duly secured by the petitioners. Petitioner alleged when the goods were ready for delivery and/or in the process of delivery, the foreign buyer wrongfully and illegally failed to proceed with the transaction, as a result whereof the entire quantity of shellac which has a very short shelf life, went waste. In terms of the export credit policy obtained by the petitioner no. 1 from Export Credit Guarantee Corporation of India (hereafter referred to as the ECGC), the opposite party /Bank directly applied to ECGC for payment of 75% of the eligible loss. Following the scrutiny by the ECOC and ECGS finding that the extent of loss suffered by the opposite party in respect of the said account was to the tune of Rs. 42,75,322/- , ECGS forwarded a cheque for 75% of such amount being Rs.32,04,992/- on or about May 25,1999. Petitioner further alleged in seeking to claim such amount, the opposite party has actively

concealed the fact that the opposite party had received payment of a sum of Rs. 32,04,992 from ECGC on account and on behalf of the petitioner no. 1. Even if such amount of debt in the said account as on June 17,1997 was taken to be correct, upon receipt of the sum of Rs.32,04,992/- from the ECGS, the debit balance in the said protested Bill Account ought to have been reduced by such amount.

2. Petitioner's further case is that by a letter dated November 6, 2000, the petitioners sought settlement of the matter with the applicant bank without prejudice to the petitioners' rights and contentions. This was necessary *interalia* in as much as according to the guideline issued by the Reserved Bank of India (RBI), no interest can be charged by any bank upon an account being classified as Non-Performing Account (NPA). By a reply dated November 27, 2000 the opposite party purported to suggest that the RBI guidelines referred to by the petitioners, were not applicable. By further letter of December 2000 the opposite party informed the petitioners' advocates that a sum of Rs.84,00,627.16/- had been claimed by the opposite party in proceedings instituted before the Tribunal. The opposite party also informed the petitioner that a total sum of Rs. 4,72,930/- has been realized by the opposite party subsequent to the filing of the proceedings before the Learned Tribunal by dividend and sale of pledged shares.

3. He further submits that by a letter dated February 1, 2001, the petitioners duly pointed out that after giving credit for the sale of pledged shares and after the realization of the pledged term deposit and after giving

credit for the payment received by the opposite party from ECGC on behalf of the petitioners, on the bank's own showing, its claim could only be Rs.7,79,521.80/- Even such figure was without ascertaining as to whether the best prices had been availed of by the opposite party in disposing of the pledged shares.

4. His further contention is that the bank has wrongfully and illegally inflate its account with a view to mislead the learned Tribunal and to falsely invoke the pecuniary jurisdiction of the Tribunal. Accordingly petitioner contended that if at the highest the bank's claims could only have been for Rs 7,79,521.80, no question arose of the bank invoking the jurisdiction of the learned Tribunal as the said purported claim fell below the limit to invoke the pecuniary jurisdiction of the learned Tribunal and as such learned Tribunal does not have jurisdiction to entertain the application or proceed to adjudicate the issues involved. The opposite party filed its evidence on affidavit on 18th February 2004 and petitioners filed a demurer application challenging the maintainability of the original application. Such application was dismissed for non-appearance of the petitioner by an order dated 14th July 2008. On the submission made by the opposite party that the petitioners were not appearing, the learned Tribunal was pleased to fix the matter on 25th November, 2008 for ex-parte hearing. By a subsequent order, petitioners were granted time for the purpose of cross-examination of the bank's witness. By such order, the learned Tribunal was pleased to record that the counsel representing the petitioners'

have right to participate in further proceeding, thus recalling the direction for ex-parte hearing.

5. Petitioners states despite the evidence on affidavit being filed, the examination of the bank's witness could not be completed as the earlier officer had retired and was no longer available for appearance before the learned Tribunal. The opposite party filed an application seeking relief to file affidavit for adopting the evidence on affidavit already filed by the bank. Such application was allowed by an order dated 10th December 2014 and the matter was fixed on 18th March 2015 for production of the witness and cross-examination. The opposite party filed an application being I.A. No. 1487 of 2021 praying for attachment before judgment in respect of the personal properties of the petitioners. Learned Tribunal was pleased to pass an *ad interim* order restraining the petitioners/defendants in the original application from dealing with or creating any third party interest in the properties described in schedule 'X' to the said application. Accordingly petitioner herein filed an application being I.A. No. 1834 of 2021 praying for an order of recalling the order dated 26th August, 2021 fixing the aforesaid OA No. 31 of 2000 for final disposal and for an order directing the petitioner/bank to produce witness Sisir Chakraborty deponent to the affidavit of evidence for enabling appellants/defendants to cross examine in terms of the order dated 10th December 2014. By the impugned order dated 23rd September 2021 the application being I.A. No. 1487 of 2021, was disposed of in favour of the opposite party. The application being I.A. No. 1834 of 2021 filed by the petitioners was rejected.

6. Mr. Debojoyti Saha learned counsel appearing on behalf of the petitioner submits that the presiding officer erred in rejecting the prayer made in I.A. 1834 of 2021 and allowing I.A. no. 1487 of 2021. Learned Tribunal does not have any jurisdiction to entertain the application and the said jurisdictional issue has been raised by the petitioners in written statement, which has not been decided.

7. Learned Judge failed to appreciate true effect and purport of the order dated 15th June 2011 passed by the Tribunal and also failed to appreciate that the petitioners have a right to cross examine the witness of the opposite party. Learned tribunal failed to appreciate that the previous order for ex-parte hearing was recalled on 15th June 2011. The learned Tribunal ought not to have been rejected the petitioners right of cross-examination of the witness of the opposite party only by reason of the proceeding being incorrectly fixed ex-parte and also failed to appreciate that the bank has not yet discharged the burden of proving alleged claim through the evidence filed on its behalf. The Tribunal infact has completely misunderstood the statutory provisions contained in section 19 (10A) and section 19(10B) of the Act of 1993. Accordingly the petitioner prayed for setting aside the order.

8. The petitioner has attacked the impugned order mainly on three grounds

(a) Tribunal has denied the petitioner/defendants right to cross examine the witness of the plaintiff /bank, unlawfully.

(b) Tribunal has unlawfully disposed of the application of attachment before the judgment being I.A. 1487 of 2021, and rejected the petitioner's

application being 1834 of 2021 ignoring the fact that the petitioner had challenged the maintainability of the O.A. proceeding.

(c) That the tribunal has no pecuniary jurisdiction to entertain the said suit, when the sum of Rs. 7,70,521.80 could have been at the highest claim made by the bank.

9. Criticizing order impugned Learned Counsel for the petitioner further submits that all materials times, the right of the petitioner /defendant for cross examination and also to participate in the proceeding was left open. In this connection the petitioner has drawn attention of the court to the order dated 15th June, 2011 by which the tribunal after recording submission of the petitioner/defendant and also taking note of the contention of the order dated 14th July 2008 had directed that as the parties are present, the answering defendant has right to participate in the further proceeding. By the aforesaid order dated 15th June, 2011 passed by the Tribunal, in fact, the petitioner was permitted to participate in the proceeding and also to cross-examine the bank's witness. He further submits that the order dated 10th June 2013 passed by the Tribunal has to be read with its earlier order dated 14th July 2008. Learned Counsel for petitioner further submits that by the order dated 15th June, 2011, the order of ex-parte as against the petitioners/ defendants was recalled and the tribunal accepted the right of the petitioner to participate in the said proceeding. In view of above, the contention of opposite party/bank that the proceeding as against the petitioner / defendants is running ex-parte is not correct and this court at the motion stage was pleased to held considering

order dated 15th June 2011 and 10th December 2014 that the tribunal's finding prima facie was incorrect and as such was pleased to stay the proceeding.

10. In this context Mr. Saha further submits that the order dated 14th July 2008 passed by the Tribunal only recorded the dismissal of the maintainability of the application which was not restored by the tribunal in its order dated 10th June 2013 but the direction as contained in the order dated 14th July, 2008 passed by the tribunal to the extent that the proceeding was set ex-parte was set aside since the order dated 14th July 2008 was dully recalled by the order on 15th June 2011 where the tribunal after hearing the petitioners directed that the petitioner's have the right to participate in the O.A. proceedings. Petitioner relied upon the case of ***Sangram Singh Vs. Election Tribunal, Kotah (1955) 2 SCR1/ AIR 1955 SC 425*** and contended that even in the O.A. proceeding the petitioners/ defendants could not be said to be set ex-parte as by virtue of the order dated 15th June, 2011, the proceedings is no longer running ex-parte and in this context he relied upon paragraph 24,25,26,35,39 of the said judgment. Mr. Saha further submits that the bank has stated that Sisir Chakraborty, who faced the dock on behalf of the bank, is no longer available and accordingly the evidence tendered by said witness on behalf of the bank on affidavit cannot be taken on record in terms of the provisions under the Indian Evidence Act, because it is settled position of law that the witness who is tendered in evidence if not available for cross-examination, his witness have to be struck off and appropriate direction have to be passed in this regard. Relying upon Rule 12(6) of the Debts Recovery

Tribunal (procedure) Rules 1993, Mr. Saha submits that Tribunal is empowered to allow cross-examination in a given situation . From the orders passed by the tribunal, it is clear that the tribunal allowed the petitioners to cross-examine the witness and said order was never challenged by the bank /opposite party and on the contrary in compliance of the order passed by Tribunal, bank has produced it's witness.

11. Mrs. Deblina Lahiri learned counsel appearing on behalf of the opposite party/bank submits that the petitioner do not have any right to cross-examine as proceedings sets for ex-parte hearing. She further submits that the scope of cross examination in such a proceeding under section 19 of the Act of 1993 is very limited. She further submits on 18.02.2004, when the liberty to cross examine the witness of the appellant/bank was allowed by the Tribunal for the first time, no reason whatsoever were recorded as to why such cross-examination is necessary. She further submits, without recording satisfaction to some special and or exceptional circumstances, the tribunal should not have granted such liberty. The list of dates indicates that the proceeding had been set ex-parte and the prayer for recalling such order has been rejected by the Tribunal. She further pointed out referring the list of dates that there is complete inconsistency in the orders of the Tribunal. While some dates were fixed for cross examination, some were fixed for final hearing and some dates were fixed for cross examination as well as arguments on O.A. proceeding. She points out that vide order dated 14.07.2008 the case was set ex-parte and it was only in 2013 that one application was made for setting aside the ex-parte

posting which was rejected vide order dated 10.06.2013. Even thereafter some dates were fixed for cross examination and production of witness. Vide order dated 31.01.2019, certain directions were given to the applicant /bank which exclusively kept out the scope of cross examination. Ultimately on 22.01.2019 direction was passed to file written notes of arguments which implies that scope of cross examination previously given had been withdrawn by the Tribunal. Infact from 2004-2021 that is for a period of 17 years, the orders reflects inconsistency which ultimately delayed the recovery proceeding initiated by the bank and due to such inordinate delay the very purpose of the Act of 1993 had been defeated. She further pointed out that order impugned is quite justified in the facts and circumstances of the case and as such it does not call for any interference.

12. In view of aforesaid arguments advanced by the parties let me examine first the scope of cross examination in a proceeding under section 19 of the Act of 1993. Time and again it has been reiterated by the Apex Court that the very purpose for establishing the Debts Recovery Tribunal being to expedite the disposal of the applications filed by the banks and financial institutions for realization of money and the Tribunals are required to deal with the applications in an expeditious manner. Section 22(1) of the Act makes it clear that the Tribunal and Appellate Tribunal shall not be bound by the procedure laid down by the Civil Procedure Code. It is true that though the Tribunal can regulate it's own procedure but such procedure must be guided by the principles of natural justice, but by no means the tribunal is bound by the

provisions as laid down in the Code of Civil Procedure. Learned counsel appearing on behalf of the petitioner referred rule 12(6) of the Debts Recovery Tribunal (procedure) Rules 1993, which to some extent *pari materia* with order XIX rule 1 of the code, but still while Tribunal has the power to require that any particular fact to be proved by affidavit or it may order the affidavit of any witness may be read at the hearing, such order must record sufficient reasons for the same. In ***Union of India and another Vs. Delhi High Court Bar Association and others*** reported in **AIR 2002 SC 1479** it was held in paragraph 23

“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.” (emphasis added).

13. Accordingly it is clear in view of aforesaid observation that as hardly any transaction with the bank takes place orally and/or without proper documentation so the *bonafide* need for the oral examination of a witness

hardly arises. It is also well settled that in a proceeding before the Debt Recovery Tribunal, detailed examination, cross examinations, provision of the Indian Evidence Act as also application of other provisions of the Civil Procedure Code like interrogatories discoveries of documents and admission need not be gone into. In exceptional cases recourse to such proceeding can be taken and the entire focus of the proceeding before the tribunal centers round the legally recoverable of dues of the bank. In ***Nahar Industrial Enterprises Ltd. Vs. Hongkong & Shanghai Banking Corporation*** reported in (2009) 8 SCC 646 while dealing with the questions, whether DRT would be a civil court, it was held in conclusion:-

“113..The Tribunal was constituted with a specific purpose as is evident from its statement of objects. The preamble of the Act also is a pointer to that too. We have also noticed the scheme of the Act. It has a limited jurisdiction. Under the Act, as it originally stood, did not even have any power to entertain a claim of set off or counter-claim. No independent proceedings can be initiated before it by a debtor. A debtor under the common law of contract as also in terms of the loan agreement may have an independent right. No forum has been created for endorsement of that right. Jurisdiction of a civil court as noticed hereinbefore is barred only in respect of the matters which strictly come within the purview of Section 17 thereof and not beyond the same. The Civil Court, therefore, will continue to have jurisdiction. Even in respect of set off or counter-claim, having regard to the provisions of sub-sections (6) to (11) of Section 19 of the Act, it is evident :-

a) That the proceedings must be initiated by the bank

b) Some species of the remedy as provided therein would be available therefore.

c) In terms of sub-section (11) of Section 19, the bank or the financial institution is at liberty to send a borrower out of the forum.

d) In terms of the provisions of the Act, thus, the claim of the borrower is excluded and not included.

e) In the event the bank withdraws his claim the counter-claim would not survive which may be contrasted with Rule 6 of Order VIII of the Code.

f) Sub-section (9) of Section 19 of the Act in relation thereto has a limited application.

g) The claim petition by the bank or the financial institution must relate to a lending/borrowing transaction between a bank or the financial institution and the borrower.

h) The banks or the financial institutions, thus, have a primacy in respect of the proceedings before the Tribunal.

i) An order of injunction, attachment or appointment of a receiver can be initiated only at the instance of the bank or the financial institution. We, however, do not mean to suggest that a Tribunal having a plenary power, even otherwise would not be entitled to pass an order of injunction or an interim order, although ordinarily expressly it had no statutory power in relation thereto.

j) It can issue a certificate only for recovery of its dues. It cannot pass a decree.

k) Although an appeal can be filed against the judgment of the Tribunal, pre-deposit to the extent of 75 % of the demand is imperative in character.

l) Even cross-examination of the witnesses need not be found to be necessary.

m) Subject to compliance of the principle of natural justice it may evolve its own procedure.

n) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code. 'Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.' [See Industrial Credit and Investment Corp'n. of India Ltd. v. Grapco Industries Ltd., (1999) 4 SCC 710]

"114...*The Tribunal, therefore, would not be a Civil Court.*

14. In *Kishorilal loomba and sons Vs. Debt Recovery Tribunal Jabalpur*

reported in **2001(1) MPLJ 400** The Madhya Pradesh High Court was of clear view that normal procedure is to receive evidence by affidavits and it only for the reasons to be recorded, the Tribunal may summon for cross-examination.

"10.....*therefore, normal procedure is to receive evidence by affidavit(s) and it is only for reasons to be recorded that the Tribunals may summon the deponent for cross-examination. Consequently, it can be said that sub-section (4) of Section 19 does not contemplate oral evidence. It is only in exceptional or in special circumstances looking to the nature of the facts and the Tribunal being satisfied on pleas being raised before it that oral evidence/cross-examination may be resorted to and provisions of Civil procedure Code, 1908 have limited application in areas the Act prescribes and where some of its principles may be found helpful which are not inconsistent with the Act and the rules. Similar view has been taken by this Court in the decisions in W.P. No. 2694 of 2000, M/S. Kishorilal Loomba Cold Retreads Pvt. Ltd., and others V. Bank of India and another, dated 21.7.2000, W.P. NO. 4475 of 2000, M/s. Shree Santoshi Pipe Works and others V. Debts Recovery Tribunal and others, dated 9.08.2000, W.P. No. 4764 of 2000, M/s. Maheswari Agencies and another V. Debts Recovery Tribunal, Jabalpur and others, dated 19.08.2000 and W.P.*

15. In view of aforesaid discussion it is clear that normally it is duty of the Tribunal to receive evidence by affidavit and it is only for reasons to be recorded that the tribunal may summon the deponent for cross examination as section 19(4) of the Act of 1993 does not contemplate oral evidence and only in exceptional cases and/or under special circumstances, considering the nature and fact of the case, the Tribunal may resort to oral evidence/cross examination by summoning the witness.

16. Now let me consider what particular fact sought to be proved by petitioner herein by way of cross examining the bank's witness. Here comes important point of challenge made by the petitioner in this revisional application, where he has taken the plea of maintainability of the proceeding before the tribunal contending that the opposite party/bank has wrongfully and illegally inflated its account with a view to mislead learned Tribunal and to falsely invoke the pecuniary jurisdiction of the Tribunal. The petitioner further contended that from the opposite party's own showing and after requisite credits are given in respect of the payments received from ECGC and also from the sale of the pledged shares and making adjustment of the term deposits, a sum of Rs. 7,70,521.80/- could have been at the highest claim by the bank, though defendant/petitioner even does not admit that such amount is due and payable by the petitioners to the opposite party/bank. Accordingly if at the highest the banks/opposite party's claim could have been for Rs.7,79,521.80 only, no question arose of the bank invoking the jurisdiction of the learned

tribunal as purported claims falls well below the pecuniary jurisdiction of the Tribunal.

17. Such contention of the petitioner is not sustainable in view of the fact that such plea not required to be proved by way of cross examination that the claim of the bank falls beyond pecuniary jurisdiction of the Tribunal. This is because all the transactions of a bank are available from statement of account and bank's documents and there is no requirement at all for cross examination to prove any amount of ECGC claim and/or any other adjustment received by the bank through any oral evidence. In this context it can be said that the defence raised by the petitioners herein in the said proceeding does not speak that entire liabilities stood discharged either under the insurance cover/guarantee or otherwise. The defence raised by the petitioner /defendant is that the ECGC claim and other adjustments being received by the opposite party/bank, the claim of the bank could hardly be Rs. 7,79,521.80/- and therefore, the tribunal has got no jurisdiction. The Apex Court in ***State Bank of Bikaner and Jaipur Vs. M/s Ballabh Das and Company*** reported in **(1999) 7 SCC 539** has clearly held that such type of defence can be considered only for a limited purpose of finding out whether the liability of the defendant/borrower was subsisting on the dates on which the case was filed, otherwise it has got no relevance for the purpose of deciding the jurisdiction of the forum. In this context the relevant portion of the judgment may be quoted below at paragraph 10.

“10. The High Court also failed to appreciate that the defence raised by the respondents does not prima facie show that the liabilities stood discharged either under the insurance cover/guarantee or otherwise. The defence raised

by the respondents is that the insurance cover/guarantee provides that delivery by the exporter to the insured of documents of export of goods for which the credit has been given or advance has been made shall be deemed to be payment by the exporter to the insured and, therefore, when the respondents delivered the export documents to the Bank they should be deemed to have paid the amounts due under those exports to the Bank. This defence can be considered only for the limited purpose of finding out whether the liability of the respondents was subsisting on the dates on which the suits were filed. Otherwise, it has no relevance for the purpose of deciding the jurisdiction of the forum. The contract of insurance/guarantee is between the Export Credit and Guarantee Corporation of India Ltd. and the appellant Bank and prima facie the term/condition in the said insurance cover/guarantee referred to above is for the benefit of the insurer and not for the benefit of the exporter i.e. the respondents. It does not absolve the respondents of the liability to repay the amounts borrowed for the purpose of making exports if the foreign buyer of those goods does not make payment to the Bank of the amount payable in respect of those goods. Though the insurer/guarantor under the insurance/guarantee possibly would stand discharged from its liability to the insured on the exporters delivering the documents of export of goods to the insured, prima facie, the principal debtor would still remain subsisting. Thus, even this prerequisite for the liability to be called a debt as contemplated by the Act having been satisfied the suits filed by the Bank should have been treated by the High Court as proceedings for recovery of the debts.” (Emphasis added)

18. In view of above the inevitable conclusion is even if by any order passed by the Tribunal earlier, liberty was given for cross-examination of bank's witness, that liberty does not create any right in favour of petitioners herein by which the well-settled principles of law and the statutory provisions can be overlooked. When it is the statutory mandate that while passing such order Tribunal must record sufficient reasons for the same and when it is palpably clear that no such reason far from sufficient reason for the same has been assigned by the Tribunal, such order giving liberty to petitioner to cross-examine, if any, cannot have any binding effect. The proviso of rule 12(6) will apply only in the case where particular issue needs to be proved by cross examination of the witness and not as a routine manner as the civil court ordinarily does. Defendant herein has not made out any such case of exceptional and special circumstances for which it can be said that the oral

evidence is absolutely necessary and as such if any such liberty granted to cross-examine witness in the absence of exceptional and/or special circumstance and specially when particular fact sought to be proved can very well be proved by way of documentary evidence, such liberty may amount to opening of a flood gate in order to frustrate the object of the Act of 1993.

19. In view of the aforesaid discussion, contention of the petitioner that the bank /opposite party has not strictly taken recourse of order XXXVIII rule 5, while passing order for attachment and that such application for attachment was made almost a span of eleven years, does not find any leg to stand specially in view of the fact that it is not the case of the petitioner that his entire liabilities in connection with impugned transaction have already been discharged and also in view of the fact that Tribunal being not bound by the code is under no obligation to follow all the neety greeties laid down in order XXXVIII rule 5, of the code.

20. In the context of the aforesaid discussion I find no merit in the present revisional application which is liable to be rejected.

21. In view of above, the ultimate finding of order impugned dated 23rd November, 2021 passed by the Debts Recovery Tribunal-1, Kolkata in O.A. No. 31 of 2000 is hereby affirmed. It is unfortunate that the said recovery proceeding is pending since 2000, and long pendency sufficiently frustrated the object of Act of 1993, the Tribunal is therefore directed to make every endeavour to dispose of the said proceeding preferably within a period of 12 weeks from the date of communication of the order.

22. C.O. 2321 of 2021 is accordingly dismissed.

There will be no order as to costs.

23. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)