Union Of India & Anr vs Delhi High Court Bar Association & Ors on 14 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1479, 2002 (4) SCC 275, 2002 AIR SCW 1347, 2002 (2) UPLBEC 1617, (2002) 2 BANKJ 1, 2002 (1) LRI 684, (2002) 3 JT 131 (SC), 2002 (2) SCALE 668, 2002 (2) COM LJ 231 SC, 2002 ALL CJ 2 1247, 2002 (2) SLT 556, 2002 (3) JT 131, 2002 (4) SRJ 375, (2002) 2 JCR 519 (JHA), (2002) 2 CURLJ(CCR) 410, (2002) 1 JLJR 745, (2002) 2 BANKCAS 194, (2002) 110 COMCAS 141, (2002) 2 EASTCRIC 93, (2002) 2 MAD LJ 122, (2002) 2 PAT LJR 280, (2002) 2 SCJ 449, (2002) 2 UPLBEC 1617, (2002) 2 SUPREME 435, (2002) 2 RECCIVR 364, (2002) 2 SCALE 668, (2002) 47 ALL LR 324, (2002) 4 CAL HN 103, (2002) 2 CIVLJ 658, (2002) 96 DLT 726, (2002) 2 BANKCLR 272

Bench: B.N. Kirpal, K.G. Balakrishnan

CASE NO.:
Appeal (civil) 4679 of 1995

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
DELHI HIGH COURT BAR ASSOCIATION & ORS.

DATE OF JUDGMENT: 14/03/2002

BENCH:
B.N. Kirpal, Y.K. Sabharwal & K.G. Balakrishnan

JUDGMENT:

W I T H T.P. (C) Nos. 400, 406-409, 302-304, 321, 329, 335, 355, 356, 357, 358, 813, 778 of 1996, 659-667 of 1995, C.A. Nos. 3951, 15334 of 1996, 5394 of 1997, 6227-6243, 6245-6246 of 2000, W.P. (C) No. 37 of 2001, T.C. (C) No. 4 of 1998 and C.A. No. 2098 of 2002 in SLP (C) No. 27932 of 1995, C.A. Nos. 2094-2097, 2099-2145 of 2002 in SLP (C) Nos. 9640-9643, 18268-18314 of 1999 J U D G M E N T KIRPAL, J.

Leave granted. The transfer petitions are allowed.

The challenge to the constitutional validity of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the Act') on the ground that the Act is unreasonable and is violative of Article 14 of the Constitution, and that the same is beyond the legislative competence of the Parliament, arises for consideration in these cases.

The banks and financial institutions had been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them. The procedure for recovery of debts due to the banks and financial institutions which was being followed had resulted in a significant portion of the funds being blocked. In order to remedy the locking up of huge funds, the Parliament enacted the said Act, which was preceded by an ordinance. The Act, inter alia, provides for the establishment of Tribunals and Appellate Tribunals. The Tribunals have been given the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions, while the Appellate Tribunals have the jurisdiction, powers and authority to entertain appeals. The procedure which is required to be followed is provided and the Act also has provisions relating to the modes of recovery of debts for which Recovery Officers are to be appointed.

The jurisdiction of the Tribunals is in respect of debts which are in excess of Rs. 10 lacs. In other words, for disputes between the banks and the other parties it was the Civil Courts which have the jurisdiction to entertain the same if the claim was less than Rs. 10 lacs. According to Section 18 of the Act, no Court or other authority is entitled to exercise any jurisdiction, powers or authority in relation to matters in respect of which such jurisdiction, powers and authority are vested with the Tribunal. Section 18, however, provides that the bar of other Courts and authorities to entertain such disputes shall not in any way oust the jurisdiction of this Court or of the High Courts in exercise of their jurisdiction under Articles 226 and 227 of the Constitution.

The validity of the said Act was successfully challenged before the Delhi High Court. By it's decision reported in Delhi High Court Bar Association and Another vs. Union of India and Others, AIR 1995 Delhi 323, against which appeal No. 4679 of 1995 is filed, the High Court held that though Tribunal could be constituted by Parliament even though it was not within the purview of Articles 323A and 323B of the Constitution, and that the expression "administration of justice" as appearing in Entry 11A of List III of the Seventh Schedule to the Constitution would include Tribunals as well administering justice; the impugned Act was unconstitutional as it erodes the independence of the judiciary and was irrational, discriminatory, unreasonable, arbitrary and was hit by Article 14 of the Constitution. In this judgment, it also quashed the appointment of a Presiding Officer of the Tribunal but that question no longer arises for consideration in these appeals.

In arriving at the aforesaid conclusion the Delhi High Court, inter alia, held as follows:

> (a) The act, in particular, Section 17 did not have a provision for a counter-claim as provided under the provisions of the Code of Civil Procedure and, therefore, the Act was irrational and arbitrary.

(b) The Act lowered the authority of the High Court vis-à-vis the Tribunal in view of the fact that suits for recovery of money exceeding Rs. 10 lacs are to be filed before the Tribunal while the suits for an amount between Rs. 5 lacs and Rs. 10 lacs was to be filed before the Delhi High Court and for less than Rs. 5 lacs before the subordinate Courts. This lowered the status of the High Court inasmuch as the Tribunal, which was presided by an officer who did not have the status of a High Court Judge would be deciding the suits for recovery of money exceeding Rs. 10 lacs.

(c) The Act eroded the independence of the judiciary since the jurisdiction of Civil Courts had been truncated and vested in the Tribunal. It also came to the conclusion that the independence of the judiciary was eroded as the High Court had no role to play in the appointment of the presiding officers.

During the pendency of this appeal, the Guwahati High Court was also required to consider the validity of this Act. By judgment dated 16.08.1999 to 20.08.1999, which is the subject-matter of Civil Appeal Nos. 6227-6246 of 2000, the High Court came to the conclusion that though the Parliament has legislative competence to enact the law, but as it had abrogated/negated the power of judicial review, which had violated the basic feature of the Constitution, the Act was void. It further held that some of the provisions of the impugned Act were liable to be struck off. The sections which were struck down were Section 17 which gives jurisdiction, powers and authority to the Tribunal and was held to be violative of Article 14 as being arbitrary and unreasonable. It also struck down the appointment of Recovery Officer and held the modes for recovery of debts under Sections 25 and 28(1) and (2) as being unarbitrary, unreasonable and without any guidelines, control etc. It further quashed Section 31 which deals with the transfer of suits/proceedings and Section 34(1) which gives overriding effect to the Act.

In the course of hearing, our attention was invited to a decision of the Karnataka High Court in the case of D.K. Abdul Khader and Others vs. Union of India and Others, AIR 2001 Karnataka 176 where a Single Judge of the High Court, while taking a different view from the one expressed by the Delhi High Court, came to the conclusion that the Parliament did not have the legislative competence to enact the Act inasmuch as Entry 11A of List III could not include "Tribunal" and furthermore that the Parliament could not exercise power to enact this law under the provisions of Article 323A or 323B of the Constitution. In other words, a Tribunal could not be constituted for any matter not specified in Articles 323A and 323B.

We will first deal with the question as to whether the Parliament has the competence to enact a law for establishing such Banking Tribunals. In order to examine the question of the competence of the Parliament to enact such a law, it is pertinent to bear in mind the observations of this Court in Navinchandra Mafatlal vs. The Commissioner of Income-tax, Bombay City, [1955] 1 SCR 829 at 836 which are as follows:

".. As pointed out by Gwyer C.J. in The United Provinces v. Atiqa Begum [1940] F.C.R. 110 at page 134 none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary

> or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It is, therefore, clear-and it is acknowledged by Chief Justice Chagla-that in construing an entry in a List conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein. The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

(Emphasis added) Again in Union of India vs. H. S. Dhillon [1972] 2 SCR 33 at page 51 it was observed as follows:

> "It seems to us that the function of Art. 246(1), read with entries 1-96 List I, is to give positive power to Parliament to legislate in respect of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so."

In Dhillon's decision, it was held that what one has to ask is whether the matter sought to be legislated is included in List II or in List III and no question has to be asked about List I. If the answer is in the negative, then it follows that the Parliament has power to make laws with respect to that matter or text.

It has thus been clearly enunciated that the power of the Parliament to enact a law, which is not covered by an Entry List II and List III, is absolute. While Articles 323A and 323B specifically enable the legislatures to enact laws for the establishment of tribunals, in relation to the matters specified therein, the power of the Parliament to enact a law constituting a Tribunal, like the Banking Tribunal, which is not covered by any of the matters specified in Article 323A or 323B, is not taken away. With regard to any of the entries specified in List I, the exclusive jurisdiction to make laws with respect to any of the matters enumerated in List I is with the Parliament. The power conferred by Article 246(1) can be exercised notwithstanding the existence of Article 323A or 323B of the Constitution.

Articles 323A and 323B are enabling provisions which specifically enable the setting up of tribunals contemplated by the said Articles. These Articles, however, cannot be interpreted to mean that it prohibits the legislature from establishing tribunals not covered by these Articles, as long as there is legislative competence under an appropriate entry in the Seventh Schedule. Articles 323A and 323B do not take away that legislative competence. The contrary view expressed by the Karnataka High Court in D.K. Abdul Khader's case does not lay down the correct law and we expressly disapprove of the same.

The Delhi High Court and the Guwahati High Court have held that the source of the power of the Parliament to enact a law relating to the establishment of the Debt Recovery Tribunal is entry 11A of List III which pertains to "administration of justice; Constitution and organisation of all Courts,

except the Supreme Court and the High Courts" In our opinion, entry 45 of List I would cover the types of legislation now enacted. Entry 45 of List I relates to "Banking". Banking operations would, inter alia, include accepting of loans and deposits, granting of loans and recovery of the debts due to the bank. There can be little doubt that under Entry 45 of List I, it is the Parliament alone which can enact a law with regard to the conduct of business by the banks. Recovery of dues is an essential function of any banking institution. In exercise of its legislative power relating to banking, the Parliament can provide the mechanism by which monies due to the Banks and Financial Institutions can be recovered. The Tribunals have been set up in regard to the debts due to the banks. The special machinery of a Tribunal which has been constituted as per the Preamble of the Act, "for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto" would squarely fall within the ambit of Entry 45 of List I. As none of the items in the lists are to be read in a narrow or restricted sense, the term "Banking" in Entry 45 would mean legislation regarding all aspects of Banking including ancillary or subsidiary matters relating to Banking. Setting up of an adjudicatory body like the Banking Tribunal relating to transactions in which banks and financial institutions are concerned would clearly fall under entry 45 of List I giving the Parliament specific power to legislate in relation thereto.

The learned counsel has drawn our attention to the provisions of the Act and we are unable to agree with the Delhi High Court that the Act or any other provision thereof is in any way arbitrary or bad in law. During the pendency of these appeals, the Act has been amended and whatever lacunae or infirmities existed have now been removed by the said Amending Act and with the framing of more Rules. For example, Rules have been framed in 1998 for the appointment of Presiding Officers of the Tribunals as well as the Presiding Officers of the Appellate Tribunals. The Rules contemplate appointments being made by a Selection Committee. Each of the Selection Committee is to consist of the Chief Justice of India or a Judge of the Supreme Court as nominated by the Chief Justice of India along with other members referred to in the said Rules. The Selection Committee so constituted would ensure fair and impartial selection of competent persons to act as Presiding Officers of the Tribunal. Furthermore Section 19 after its amendment reads as follows:

> "19. Application to the Tribunal.- (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-
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> (a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or
>
> (b) any of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain;

or

(c) the cause of action, wholly or in part, arises.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has a claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to the Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

> Provided that the fee may be prescribed having regard to the amount of debt to be recovered:
>
> Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of Section 31.
>
> (4) On receipt of the application under sub-section (1) or sub-

section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) 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.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,-

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, 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 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 applications 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.

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956 (1 of 1956), the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of Section 529-A of the Companies Act, 1956 (1 of 1956) and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

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

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

> Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution find that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section 9(1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

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

The aforesaid section prescribes the manner in which an application to the Tribunal filed by a bank or a financial institution is to be dealt with. Section 22 provides that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice and, subject to the rules framed. They shall have powers to regulate their own procedure as given to them. The Tribunal and the Appellate Tribunal under Section 22(2) are given the same powers as are vested in a civil court with regard to the matters specified in the said sub-section which include the power of summoning and enforcing the attendance of any person and examining him on oath.

The very purpose of establishing the Tribunal being to expedite the disposal of the applications filed by the banks and financial institutions for realisation of money, the Tribunal and the Appellate Tribunals are required to deal with the applications in an expeditious manner. It is precisely for this reason that Section 22(1) stipulates that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. Therefore even though the Tribunal can regulate its own procedure, the Act requires that any procedure laid down by it must be guided by the principles of natural justice while, at the same time, it should not regard itself as being bound by the provisions of the Code of Civil Procedure.

On behalf of some of the respondents, it was contended that on a correct interpretation of Rule 12(6) of the Debts Recovery Tribunal (Procedure) Rules, 1993, wherever any party desires the production of a witness for cross-examination, then his evidence could not be taken by way of affidavit but it would be mandatory for the Tribunal to require the production of the witness. It was submitted that this provision is in pari materia with Order 19 Rule 1 of the Code of Civil Procedure, and the view taken by some of the Tribunals that a party does not have a right to cross-examine a witness, whose evidence is taken on affidavit, is not correct.

With the amendment of the Act in 2000 while a new Section 19 was inserted in place of the existing one, section 22 has not undergone any change and the same reads as follows:

"22. Procedure and powers of the Tribunal and the Appellate Tribunal-

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their

own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

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

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code and the Tribunal or the Appellate Tribunal shall be deemed to be civil court for all purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

By a notification dated 19.6.1997, some of the rules contained in the Debts Recovery Tribunal (Procedure) Rules, 1993, were amended. It is not necessary to refer to all the amendments so made, but what is important is to examine Rule 12 which, after amendment, reads as follows:

"12. Filing of reply and other documents by the respondent (1) 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.

(2) The defendant shall also endorse one copy of the reply along with documents as mentioned in sub-rule (1) to the applicant.

(3) The Tribunal may, in its discretion on application by the defendant, allow the filing of reply referred to in sub-rule (1), after the expiry of the period referred to therein.

(4) 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.

(5) 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.

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

Provided that where it appears to the Tribunal that either applicant or defendant desires the production of a witness for cross-examination, and that such witness can be produced an order shall not be made authorising the evidence of such witness to be given by affidavit.

(7) If the defendant denies his liability to pay the claim made by the applicant, the Tribunal may act upon the affidavit of the applicant who is acquainted with the facts of the case or who has on verification of the record sworn the affidavit in respect of the contents of application and the documents as evidence.

(8) Provisions contained in section 4 of the Bankers' Books Evidence Act, 1891 (18 of 1891) shall apply to a certified copy of an entry in a banker's book furnished along with the application filed under sub-section (1) of Section 19 by the applicant."

As a result of the amendments made in the Act and the Rules, the position which would emerge is that Section 19(1) of the Act requires the filing of an application by a bank or a financial institution for the recovery of debt to be made before a Tribunal having territorial jurisdiction. On receipt of the application, summons are issued to the defendant who has to show cause within the stipulated period as to why the relief prayed for should not be granted. A right is now given by sub-section 6 of Section 19 to the defendant to claim a set-off against the applicant's demand and the said written statement is to have the same effect as a plaint in a cross-suit. Under sub-section 8 of Section 19, the defendant is also entitled to set-up a counter claim in addition to his right of claiming a set-off. Sub-section 20 of Section 19 provides that after giving the applicant and the defendant an opportunity of being heard, the Tribunal may pass such interim or final order as it thinks fit to meet the ends of justice. It is after this order that a certificate is issued by the Presiding Officer to the

Recovery Officer for recovery of money. Section 22 of the Act has not been amended. Therefore, reading Sections 19 and 22 of the Act together, it appears that the Tribunal and the Appellate Tribunal are to be guided by the principles of natural justice while trying the matter before them. Section 22(1) of the Act stipulates that the Tribunal and the Appellate Tribunal, while being guided by the principles of natural justice, are to be subject to the other provisions of the Act and the Rules. Rule 12(7) provides that if a defendant denies his liability to pay the claim made by the applicant, the Tribunal may act upon the affidavit of the applicant who is acquainted with the facts of the case. In this Rule, which deals with the consideration of the applicant's bank application, there is no reference to the examination of witnesses. This sub-rule refers only to the affidavit of the applicant. Rule 12(6), on the other hand, provides that the Tribunal may, at any time, for sufficient reason order a fact to be proved by affidavit or may pass an order that the affidavit of any witness may be read at the hearing. It is in the proviso to this sub-rule that a reference is made to the cross-examination of witnesses.

At the outset, we find that the Rule 12 is not happily worded. The reason for establishing banking tribunals being to expedite the disposal of the claims by the banks, the Parliament thought it proper only to require the principles of natural justice to be the guiding factor for the Tribunals in deciding the applications, as is evident from Section 22 of the Act. While the Tribunal has, no doubt, been given the power of summoning and enforcing the attendance of any witness and examining him on oath, but the Act does not contain any provision which makes it mandatory for the witness to be examined, if such a witness could be produced. Rule 12(6) has to be read harmoniously with the other provisions of the Act and the Rules. As we have already noticed , Rule 12 (7) gives the Tribunal the power to act upon the affidavit of the applicant where the defendant denies his liability to pay the claims. Rule 12(6), if paraphrased, would read as follows:

> 1. The Tribunal may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit.. on such conditions as the Tribunal thinks reasonable;
>
> 2. The Tribunal may at any time for sufficient reason order.that the affidavit of any witness may be read at the hearing, on such conditions as the Tribunal thinks reasonable.

In other words, the Tribunal has the power to require any particular fact to be proved by affidavit, or it may order 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 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 it 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.

The manner in which a dispute is to be adjudicated upon is decided by the procedural laws which are enacted from time to time. It is because of the enactment of the Code of Civil Procedure that normally all disputes between the parties of a civil nature would be adjudicated upon by the civil courts. There is no absolute right in anyone to demand that his dispute is to be adjudicated upon only by a civil court. The decision of the Delhi High Court proceeds on the assumption that there is such a right. As we have already observed, it is by reason of the provisions of the Code of Civil Procedure that the civil courts had the right, prior to the enactment of the Debt Recovery Act, to decide the suits for recovery filed by the banks and financial institutions. This forum, namely, that of a civil court, now stands replaced by a banking tribunal in respect of the debts due to the bank. When in the Constitution Articles 323A and 323B contemplate establishment of a tribunal and that does not erode the independence of the judiciary, there is no reason to presume that the banking tribunals and the appellate tribunals so constituted would not be independent, or that justice would be denied to the defendants or that the independence of the judiciary would stand eroded.

Such tribunals, whether they pertain to Income-tax or Sales-tax or Excise and Customs or Administration, have now become an essential part of the judicial system in this country. Such specialised institutions may not strictly come within the concept of the judiciary, as envisaged by Article 50, but it cannot be presumed that such tribunals are not an effective part of the justice delivery system, like courts of law. It will be seen that for a person to be appointed as a Presiding Officer of a Tribunal, he should be one who is qualified to be a District Judge and, in case of appointment of the Presiding Officer of the Appellate Tribunal he is, or has been, qualified to be a Judge of a High Court or has been a member of the Indian Legal Service who has held a post in Grade-I for at least three years or has held office as the Presiding Officer of a Tribunal for at least three years. Persons who are so appointed as Presiding Officers of the Tribunal or of the Appellate Tribunal would be well versed in law to be able to decide cases independently and judiciously. It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same can be subjected to judicial review by the High Court under Articles 226 and 227 of the Constitution.

With the establishment of the Tribunals, Section 31 provides for the transfer of pending cases from Civil Courts to the Tribunal. We do not find such a provision being in any way bad in law. Once a Debt Recovery Tribunal has been established, and the jurisdiction of Courts barred by Section 18 of the Act, it would be only logical that any matter pending in the civil court should stand transferred to the Tribunal. This is what happened when the Central Administrative Tribunal was established.

All cases pending in the High Courts stood transferred. Now that exclusive jurisdiction is vested in the Banking Tribunal, it is only in that forum that bank cases can be tried and, therefore, a provision like Section 31 was enacted.

With regard to the observations of the Delhi High Court in relation to the pecuniary jurisdiction of the tribunals and of the Delhi High Court, the Act has been enacted for the whole of India. In most of the States, the High Courts do not have original jurisdiction. In order to see that the Tribunal is not flooded with cases where the amounts involved are not very large, the Act provides that it is only where the recovery of the money is more than Rs. 10 lacs that the Tribunal will have the jurisdiction to entertain the application under Section 19. With respect to suits for recovery of money less than Rs. 10 lacs, it is the subordinate courts which would continue to try them. In other words, for a claim of Rs. 10 lacs or more, exclusive jurisdiction has been conferred on the tribunal but for any amount less than Rs. 10 lacs, it is the ordinary civil courts which will have jurisdiction. The bifurcation of original jurisdiction between the Delhi High Court and the subordinate Courts is a matter which cannot have any bearing on the validity of the establishment of the Tribunal. It is only in those High Courts which have original jurisdiction that an anomalous situation arises where suits for recovery of money less than Rs. 10 lacs have to be decided by the High Courts while the tribunals have jurisdiction to decide suits for recovery of more than Rs. 10 lacs. This incongruous situation, which can be remedied by the High Court divesting itself of the original jurisdiction in regard to such claims and vesting the said jurisdiction with the subordinate courts or vice versa, cannot be a ground for holding that the Act is invalid.

At the time when the Guwahati High Court had rendered its decision there was only one Appellate Tribunal. It is for that reason that the Guwahati High Court had observed that the judicial review was illusory. Now, more Appellate Tribunals have been established and the inconvenience of the litigant in travelling a long distance to approach a Appellate Tribunal cannot be regarded as making the judicial review of the Tribunal's decision illusory. Furthermore, with the pecuniary jurisdiction of the Tribunal being of Rs. 10 lacs and above for a fairly large number of borrowers of small amounts, the civil courts are not divested of their jurisdiction.

The Guwahati High Court had held that Sections 25 and 28 are arbitrary and unreasonable, being without any guidelines or control. These observations were made prior to the amendment of Sections 25 and 28. After amendment the said provisions read as under:-

> "25. Modes of recovery of debts.- The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (22) of section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:-
>
> (a) attachment and sale of the movable or immovable property of the defendant;
>
> (b) arrest of the defendant and his detention in prison;
>
> (c) appointing a receiver for the management of the movable or immovable properties of the defendant.

28. Other modes of recovery.- (1) Where a certificate has been issued to the Recovery Officer under sub-section (7) of section 19, the Recovery Officer may, without prejudice to the modes of recovery specified in section 25, recover the amount of debt by any one or more of the modes provided under this section.

(2) If any amount is due from any person to the defendant, the Recovery Officer may require such person to deduct from the said amount, the amount of debt due from the defendant under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Recovery Officer:

> Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).
>
> (3) (i) The Recovery Officer may at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the defendant or to any person who holds or may subsequently hold money for or on account of the defendant, to pay to the Recovery Officer either forthwith upon the money becoming due or being held or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount of debt due from the defendant or the whole of the money when it is equal to or less than that amount.
>
> (ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the defendant jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such amount shall be presumed, until the contrary is proved, to be equal.
>
> (iii) A copy of the notice shall be forwarded to the defendant at his last address known to the Recovery Officer and in the case of a joint account to all the joint holders at their last addresses known to the Recovery Officer.
>
> (iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank, financial institution, or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like to be made before the payment is made notwithstanding any rule, practice or requirement to the contrary.
>
> (v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or the part thereof is not due to the defendant or that he does not hold any money for or on account of the defendant, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant on the date of the notice, or to the extent of the defendant's liability for any sum due under this Act, whichever is less.

(vii) The Recovery Officer may, at any time or from time to time, amend or revoke any notice under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the defendant to the extent of the amount so paid.

(ix) Any person discharging any liability to the defendant after the receipt of a notice under this sub-section shall be personally liable to the Recovery Officer to the extent of his own liability to the defendant so discharged or to the extent of the defendant's liability for any debt due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Recovery Officer, he shall be deemed to be a defendant in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were a debt due from him, in the manner provided in sections 25, 26 and 27 and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 25.

(4) The Recovery Officer may apply to the court in whose custody there is money belonging to the defendant for payment to him of the entire amount of such money, or if it is more than the amount of debt due, an amount sufficient to discharge the amount of debt so due.

(4A) The Recovery Officer may, by order, at any stage of the execution of the certificate of recovery, require any person, and in case of a company, any of its officers against whom or which the certificate of recovery is issued, to declare on affidavit the particulars of his or its assets.

(5) The Recovery Officer may recover any amount of debt due from the defendant by distraint and sale of his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961 (43 of 1961)."

While Section 25 provides for modes of recovery of debts either by attachment and sale or arrest or appointment of a receiver, Section 28 provides for modes of recovery in addition to the ones specified in Section 25. A perusal of the aforesaid provisions cannot lead one to the conclusion that the same are arbitrary, unreasonable or without any guidelines. It is quite clear that in order to recover the debts, the recovery officer has to attach and sell the immovable property and that for protection and preservation of the same, he has the power to appoint a Receiver for the management thereof.

By virtue of Section 29 of the Act, the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-Tax (Certificate Proceedings) Rules, 1962, have become applicable for the realisation of the dues by the Recovery Officer. Detailed procedure for recovery is contained in these schedules to the Income-Tax Act, including provisions relating to arrest and detention of the defaulter. It cannot, therefore, be said that the recovery officer would act in an arbitrary manner. Furthermore, Section 30, after amendment by the Amendment Act, 2000, gives a right to any person aggrieved by an order of the Recovery Officer, to prefer an appeal to the Tribunal. Thus now an appellate forum has been provided against any orders of the Recovery Officer which may not be in accordance with law. There is, therefore, sufficient safeguard which has been provided in the event of the Recovery Officer acting in an arbitrary or an unreasonable manner. The provisions of Sections 25 and 28 are, therefore, not bad in law.

For the aforesaid reasons, while allowing the appeals of the Union of India and the Banks, we hold that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is a valid piece of legislation. As a result thereof, the writ petitions or appeals filed by various parties challenging the validity of the said Act or some of the provisions thereof, are dismissed. It would be open to the parties to raise other contentions on the merits of their cases before the authority constituted under the Act and, only thereafter, should a High Court entertain a petition under Article 226 and/or 227 of the Constitution. Transferred Cases stand disposed of accordingly. Parties to bear their own costs.

.....J. [B.N. Kirpal] ...J. [Y.K. Sabharwal] .J. [K.G. Balakrishnan] March 14, 2002.