

between the Central Government and State Governments as the power to regulate the Real Estate Sector falls within the domain and jurisdiction of both Governments. This Act is definitely a harbinger of positive changes in a sector of key importance to the Indian economy hitherto marked by

rampant venality, rapacious consumer exploitation and lack of even semblance of regulation. Hence, it is expected that the effective implementation of the Act will inevitably bring about expected beneficial outcomes in the sector adding to the further strengthening of the Indian economy.

### A CRITICAL STUDY – IMPLEADMENT OF LEGAL REPRESENTATIVES -

*Whether Civil Procedure Code including Order 22(4) and 22(9) CPC applies to the procedure covered by the Recovery of Debts Due to Banks and Financial Institution Act 1993*

By

—**POOLLA SAMBASIVA RAO,**  
Advocate, Narsipatnam

It appears, there has been a considerable controversy as to whether entire Civil Procedure Code applies to the proceedings covered by the Recovery of Debts Due to Banks and Financial Institution Act, 1993. There are two schools of thought one some of the provisions like Order 22 applies and another school of thought in contra distinction entire CPC applies. An exhaustive study of the matter in this direction appears to be desideratum in view of its applicability in the day-to-day proceeding before the Tribunal. In order to have an impact over this critical issue, the relevant sections of the Act are extracted. Section 22 of the Act postulates Tribunal and the appellate Tribunal shall not be bound by the procedure laid down by CPC but should be guided by the principles of natural justice subject to the other provisions of the Act and rules. The Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the place at which they shall have their sittings. In sub-section (2) of Section 22. The Debts Recovery Tribunal has been given the same powers as are vested in civil Court under Civil Procedure Code 1908, while trying a suit in respect on 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.
- (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.

Even a cursory look of the above section and the rules framed under the Act, it is found there appears to be an inhibition for the applicability of the CPC and the provision of Order XXII of CPC relating to the impleadment of legal representatives and the concomitant abatement *etc.* However, it mentions the Tribunal should be guided by the

principles of natural justice. But the conation of the expression natural justice is not defined. It depends upon the facts of each case.

### **Natural Justice**

“Rules of natural justice” means that substantial requirements of justice should not be violated. The aim of natural justice is to secure justice or prevent miscarriage of justice. Natural justice supplements law. The rules natural justice are not embodied rules. What particular rules of natural justice should apply to a given case must depend to a great extent on the facts circumstance of each case (*A.K. Karipaka v. Union of India*).

When Section 22(1) contemplates own procedure the procedure may be analogous to the one obtained in the Civil Procedure Code and import the provisions of Order XXII(4)(3) and 9.

Bringing the legal representatives of the deceased is a must because unless it is done, the decree if any passed on a claim Application of Bank or Financial Institution cannot be executed against the unrepresented assests of the deceased defendant.

It is settled, law the party litigant is to visit the eventualities either of death, Marriage or insolvency for the efficacious, prosecution of the procedure, the Tribunal should adopt the procedure as contained under Order 22 of Civil Procedure Code whatever might be the controversy even for the limited purpose of impleadment of the legal representatives, the provisions of Order 22(4) and the concomitant Order 22(9) seems to be mandatory.

Even otherwise since there is no specific provision in the Act and the rules for the impleadment of legal representatives, the Presiding Officer of the Debts Recovery Tribunal will have to adopt a procedure which may not be prejudicial to either of the parties for the impleadment of legal representatives, presumably the procedure

adopted under Order 22(4) and Order 22(9). Considering the matter from another angle, as provided under Section 24 of the Act the provisions of Limitation Act 1963 shall as far as may apply to an application made to a Tribunal which includes Articles 120 and 121 which *inter alia* refers to the applicability of CPC.

The study and the scope of the article is confined at least to the applicability of Order 22(4) and (9) CPC for the impleadment and the concomitant abatement.

AIR 1997 Cal. 359, *Union Bank of India v. Golam Mossian Holder and others*, laid down the provisions of Order XXII of Civil Procedure Code would be straight applicable to the proceeding before the Debts Recovery Tribunal and the relevant observations of the learned Judge in Paragraph 3 at Page 362 are as follows.

The period of filing an application for substitution and the limitation should also be governed by Order 22 of the Civil Procedure Code and after the expiry of the time Section 5 of Limitation Act may sought to be applied and the guiding principles may be made effective.

The time forecast by Civil Procedure Code, for making substitution is much shorter than that of the Limitation Act. Therefore, the *pari materia* shall fit in better with the object of the Act as enunciated in the Recovery of Debts Due to Bank and Financial Institution Act, 1993. Therefore, hence forward the Debts Recovery Tribunal is required to deal with questions which result as off-shoot from death, marriage and insolvency of a party before it. It should adhere to particular provision of Order 22 of the Civil Procedure Code. It is made clear that it is not on warrant for which the Debts Recovery Tribunal shall get any encouragement that entire Civil Procedure Code is to be applied for as a whole. It is only for the limited purpose for taking care

of the eventualities like death, insolvency and marriage only. The particular provision of Order 22 should be restored and 22 also includes within its fold the other residuary eventualities like assignment or anything else which covered by Order 22. This Court making it clear that non-application of the Code of Civil Procedure Code does not operate as a bar to apply Order 22 of the Code of Civil Procedure so that the mischief of free play of the whims of the vagaries of the person do not come into play and that may not take as a substitute of practical implementation of the principles of natural justice. In this context, a reference may be made to the case of *A.A. Haja Muniuddin v. Indian Railways*, (1992) 4 SCC 736 = AIR 1993 SC 361, where Supreme Court has held on construction of Section 18(1) of the Railway Claims Tribunal Act, 1987 that the claims Tribunal shall not be bound by the procedure of the Civil Procedure Code but does not go so far as to say that it 'shall be precluded' from invoking the provision of the code even if the same is not inconsistent with the Act and the rules. A view which advances the cause of justice must be preferred to the one which defeats it. This Court reserves this thought for elucidation in details about the pith and substance of the principles of natural justice being historically derived from the concept of just nature but this Court does not intend to go in detail of the same on this issue but it only makes a restricted application of Order 22 so that the exercise may be governed by particular procedural modalities.

However it is explicit this decision lays down the entire civil procedure code is not application as a whole and its applicability for the limited purpose of the eventualities like death, insolvency and marriage only. The particular provision of Order 22 shall be resorted and Order 22 also includes within its fold like residuary eventualities like assignment or anything which is covered by Order 22.

Be this limited application as it may.

The issue of applicability of CPC was once again came up for consideration.

Adverting to catena of decisions on this critical issue the Supreme Court in its judgments, (1999) 6 SCC 755 and (1999) 4 SCC 710, has set at rest this controversy for good and laid down the applicability of Civil Procedure Code in its entirety and the law on the subject is now no longer *res integra*. The relevant observations of the Supreme Court are extracted as hereunder.

The scope and the extent of the powers of the Tribunal are mainly referred to in sub-clause (1) of Section 22 of the Act which says the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure Code but shall be guided by the principles of natural justice. As stated in *Grap* by this Court the Tribunal can even go beyond the code as long as it passes orders inconformity with principles of natural justice. We may add that Section 19(6) does not in any manner limit the generality of the powers of the Tribunal under Section 22(1).

To a similar effect the decision of the Supreme Court reported in (1999) 4 SCC 710 = AIR 1999 SC 1975.

In view of this authoritative judgment it is evident entire Civil Procedure Code applies to the proceedings covered by the Recovery of Due to Banks under Financial Institutions Act 1933 and the Tribunal can travel beyond the provision of Civil Procedure Code.

On a comprehensive analysis of the entire matter *pro* and *contra* it is suggested entire Civil Procedure Code applies to the proceedings covered by Recovery of Debts Due to Bank and Financial Institutions, 1933. As sequel the provisions of Order 22(4) and Order 22(9) CPC applies *in extenso*.

Any sophisticated contra view is worth welcome.