REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8972-8973 OF 2014

BANK OF RAJASTHAN LTD. …APPELLANT

Versus

VCK SHARES & STOCK BROKING SERVICES LTD. …RESPONDENT

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The present reference arises from a question mark over the legal right of the borrower to initiate proceedings before a Civil Court against the bank or financial institution, which seeks to recover a loan amount against it.

The Factual History:

2. The appellant bank, Bank of Rajasthan Ltd. (since amalgamated with ICICI Bank Ltd.), sanctioned a term loan to the respondent company on 28.06.1994 with a limit of Rs.1.50 crores at interest of 19.25% per annum, repayable in twelve quarterly instalments. In order to secure the loan, the

guarantors including the respondent, *inter alia* offered title deeds of immovable properties as security. By mutual agreement, a further credit overdraft facility was granted on 19.09.1995, up to a limit of Rs.5 crores. This additional credit was secured by the deposit of shares, stocks, and securities of various companies. The respondent did not adhere to financial discipline, resulting in the appellant issuing a notice on 01.07.1997, calling upon the respondent to settle the term loan account and overdraft facility account within three days of the receipt of the notice.

3. Since the respondent failed to make the payment, the appellant filed an application, being OA No.263 of 1997, for recovery of the amounts due under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as '*RDB Act*') before the Debts Recovery Tribunal, Kolkata (hereinafter referred to as '*the DRT*') on 21.11.1997. The appellant sought a recovery certificate against the respondent for Rs.8,62,41,973.36 including interest at the rate of 20.88% per annum.

4. The respondent entered appearance to defend the proceedings but in addition also filed a Civil Suit No.77 of 1998 before the Kolkata High Court

against the appellant on 06.03.1998. The respondent *inter alia*, claimed a decree for sale of the pledged shares, recovery of sale proceeds, and an inquiry into the losses suffered by the respondent along with a decree for payment of money after the same.

5. A crucial development took place on 18.03.1998 when the appellant sold the pledged shares of BFL Software Ltd. for a total sum of Rs.5,77,68,000/- to adjust the amounts against the dues in view of the authorisation available with them as a part of the loan transaction. The respondent, as a sequitur, filed Civil Suit no.129 of 1999 before the High Court of Calcutta on 09.03.1999 praying, *inter alia*, for the following reliefs:

> "i) A declaration that the sale of shares of BFL Software Ltd. was void;
>
> ii) a decree for return of pledged shares in respect of overdraft facility account, and in default to pay Rs. 48.95 crores; and
>
> iii) a declaration that no sum was payable by the Respondent to the Appellant in respect of the term loan dated 27.07.1994 and Overdraft Account dated 19.09.1995 and that the Appellant bank was not entitled to a decree for a sum of Rs. 8,62,41,973.36 from the Respondent."

6. The appellant, in those proceedings, filed applications, being GA No.4206 of 2000 in C.S. No.77 of 1998 and GA No.4171 of 2000 in C.S.

No.129 of 1999 in November 2000, seeking rejection of the plaint and dismissal of the suits filed by the respondent. It was claimed that the suits were not maintainable and that the High Court lacked jurisdiction as the same exclusively vested with the DRT. The learned Single Judge vide order dated 06.09.2022 allowed both the applications of the appellant and directed the suits to be taken off from the file of the High Court. The respondent filed two appeals, being APOT No.691 of 2002 (later APO No.488 of 2002) and APOT No.692 of 2002 (later APO No.489 of 2002), challenging the order dated 06.09.2022 of the learned Single Judge. The Division Bench vide its order dated 27.09.2022 stayed the operation of the order of the learned Single Judge while admitting the appeal.

7. Insofar as the DRT proceedings were concerned, OA No.263 of 1997 was disposed of by the DRT vide order dated 19.05.2003 predicated on a reasoning that the appellant bank's claim of Rs.6,04,17,777.36 was satisfied through sale of pledged shares. It found that the amount actually due under the proceedings stood settled and paid. The appellant was directed to return the title deeds of the pledged shares and other securities to respondent. On the counter claim filed by the respondent, the DRT held that the respondent was entitled to recover Rs.6,88,187.49 from the appellant within four weeks

of the order. The respondent was also granted liberty to file appropriate proceedings for recovery of dividends on the pledged shares except the sum of Rs.20,11,337.35 for which set off was allowed in the proceedings.

8. The appellant, feeling aggrieved, proceeded to file an appeal before the Debts Recovery Appellate Tribunal, Kolkata (hereinafter referred to as '*the DRAT*') with M.A. No.31 of 2003, which was dismissed vide an order dated 14.11.2003 opining that the appellant should have sold the shares in 1996 and, thus was not entitled to claim interest. The appellant still not being satisfied moved C.O. No.2777 of 2003 under Article 227 of the Constitution of India before the Kolkata High Court on 17.11.2003 which was, however, dismissed in default vide High Court order dated 11.02.2004 but restored later before a Single Judge vide order dated 16.01.2013. We are informed that these proceedings also stand dismissed on 26.08.2019 and, thus, there appears to be a quietus to the extent of claim of the bank. The respondent, in terms of the decree, has also received the amounts due to it and thus nothing survives qua that aspect.

9. Now, coming back to the suit instituted by the respondent, which was dismissed by the learned Single Judge on the finding that the Court lacked

jurisdiction; the Division Bench allowed the appeals filed by the respondent against the orders of the learned Single Judge in two cases, and it is the decision in the two appeals permitting continuation of suits which have been assailed before this Court.

<u>Rationale of the Division Bench in restoring the suits:</u>

10. The respondent successfully contended before the High Court that there was no provision under the RDB Act for ousting the jurisdiction of the Civil Court and to entertain a suit against banks and financial institutions. There was also no provision to allow for transfer of suits against banks and the financial institutions which were pending before the Civil Court. It was thus submitted that the jurisdiction of the Civil Court would remain intact even after the amendment to the RDB Act effected in the year 2000, whereby the provisions for set-off and counterclaims were included under Section 19 of the RDB Act. The newly inserted sub-Sections (7) and (9) under Section 19 provided that a set-off/counterclaim filed by the borrower would have the same effect as a plaint in a cross-suit to be determined by the DRT.

11. The case of the appellant was that the proceedings before the DRT were already pending when the suits were filed by the respondent. Thus, the issue ought to have been raised in the statement of defence either by way of set-off or a counterclaim before the DRT. It was pointed out that the respondent had initially not raised such a counterclaim in the proceedings before the DRT, but later this issue (subject matter of subsequent suit, being CS No.129 of 1999) had been added by way of amendment. The respondent pointed out that under the RDB Act, banks and financial institutions were placed in an unequal position as they were barred from raising a counterclaim before the Civil Court.

12. The Division Bench of the High Court opined that as per the view of this Court in ***Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation***,[1] a suit filed by a borrower against the bank was not barred before the Civil Court, although a suit filed by the bank against the borrower was barred. This judgment was found to be the authority on the point as it came subsequent to the other decisions of the Supreme Court on this issue.

[1] (2009) 8 SCC 646.

Proceedings before this Court:

13. The reference in the present proceedings arose out of an order dated 17.09.2014 noticing an apparent conflict of views. It was observed that a two-Judges Bench of this Court in ***United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. And Others***[2] had taken a view that as per the legislative scheme of the RDB Act, jurisdiction was conferred upon the DRT to try a counterclaim and set-off under Section 19 of the RDB Act and that all such counter-claims and set-offs, including a cross-suit filed independently, should be tried by the DRT.

14. In a later decision in ***Indian Bank v. ABS Marine Products (P) Ltd.***[3] a Division Bench of this Court took the view that the jurisdiction of the Civil Courts was not barred in regard to any suit filed by the borrower against a bank for any relief. Jurisdiction was barred only in regard to applications by a bank or a financial institution for recovery of its debts. It was held that although a counterclaim and set-off may be made under sub-Sections (6) and (11) of Section 19 of the RDB Act, no jurisdiction was conferred on the DRT to try independent suits or proceedings initiated by the borrowers. It was thus held that the borrower had the option to file a separate suit before

[2] (2000) 7 SCC 357.
[3] (2006) 5 SCC 72.

the Civil Court and the counterclaim before the DRT was not the only remedy. Referring to the earlier judgment in ***Abhijit Tea Co. Pvt. Ltd. & Others*** (supra), the Bench in the ***Indian Bank*** (supra) observed that an independent suit can be deemed to be a counterclaim and can be transferred to DRT only if the following conditions are satisfied:

> "a. The subject matter of the bank's suit, and the suit of the defendant against the bank, should be inextricably connected in the sense that decision in one would affect the decision in the other.
>
> b. Both parties (the plaintiff in the suit against the bank and the bank) should agree for the independent suit being considered as a counter-claim in the bank's application before the Tribunal, so that both can be heard and disposed of by the Tribunal."

15. Another Co-ordinate Bench of this Court in ***State Bank of India vs. Ranjan Chemicals Ltd. and Another***[4] held that there was no need to restrict the power of the Civil Court to order joint trial by introducing a condition that a joint trial could be ordered only with the consent of both parties. It was observed on the basis of ***Abhijit Tea Co.'s*** case that a claim in an independent suit could be considered as a claim for set-off and counterclaim within the meaning of Section 19 of the RDB Act.

[4] (2007) 1 SCC 97.

16. Thus, in the reference order, it was mentioned that subsequent to the ***Ranjan Chemicals Ltd.*** case (supra), another Division Bench in ***Nahar Industrial Enterprises Ltd.*** case (supra) held that the decision in ***Ranjan Chemicals Ltd.*** (supra) could not have departed from the decision in ***Indian Bank*** case (supra), both being Coordinate Benches. It was thus concluded that there existed a difference of opinion between several benches of this Court on this issue and it was considered appropriate to refer the following questions to a larger Bench.

> "(a). Whether an independent suit filed by a borrower against a Bank or Financial Institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act by the DRT ?
>
> (b). If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?
>
> (c). Is the jurisdiction of a Civil Court to try a suit filed by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a Bank or Financial Institution?"

17. We are thus to opine on the aforesaid questions referred to us.

<u>Plea of the Appellant</u>:

<u>Question No.1</u>

18. The Supreme Court of India in ***Indian Bank*** case (supra), ***Ranjan***

Chemicals Ltd. case (supra) and ***Nahar Industrial Enterprises Ltd.*** case (supra) has had no cleavage of opinion regarding the first question referred to a larger bench as they held that an independent suit by a borrower can be transferred and tried along with the original application by the bank under the RDB Act. The difference of opinion arose only with respect to consent of the parties. These decisions have set no bar in law regarding the transfer of independent suit filed by the borrower against the bank to be decided as a counterclaim/set-off by the DRT in an original application filed by the bank.

19. The appellant contended that non-consolidation of actions may lead to multiplicity of actions and conflicting decisions between the same parties on the same cause of action and, thus, sought answer in the affirmative to the first question.

<u>Question no.2</u>

20. Mr.V.V. Giri, learned senior counsel for the appellant, while conceding that consolidation of suits is not superficially provided for under the Civil Procedure Code, 1908 (hereinafter referred to as '*the Code*'), contended this Court on multiple occasions has held that the absence of specific provisions governing consolidation of suits provided for in the Code, the Court may exercise its inherent powers under Section 151 of the

Code directing consolidation.[5]

21. The only cavil to the proposition is that Section 151 of the Code cannot be utilised to pass orders contrary to the express provisions of the Code. In view of this legal position, it was contended that no consent of parties is required for exercise of the inherent powers of the Court and, thus, the opinion in ***Indian Bank's*** case (supra) followed in ***Nahar Industrial Enterprises*** case (supra) putting such a consent as a pre-condition to direct consolidation of suits by the borrowers is contrary to the permissible exercise of inherent powers of the Court under Section 151 of the Code. Thus, question no.2 was requested to be answered in the negative.

Question no.3

22. The provisions of RDB Act provide for a complete scheme to try a counterclaim/set-off filed by the borrower along with a written statement to an OA filed by the bank as a cross-suit. This was stated to be quite evident from a plain reading of Section 19(7) and Section 19(9) of the RDB Act. The overall scheme of Sections 17, 18 and 19 of the RDB Act was contended to form a bar for the purposes of Section 9 of the Code.

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[5] ***Mahalaxmi Co-operative Housing Society Ltd. v. AshabhaiAtmaram Patel,*** **(2013) 4 SCC 404 (Paras 45-46);** ***Chitivasala Jute Mills v. Jaypee Rewa Cement,*** **(2004) 3 SCC 85 (Para 12); and** ***KK Velusamy v. N. Palanisamy,*** **(2011) 11 SCC 275, (Para 12).**

23. The extensive provisions i.e. Sections 19(5), (6), (8), (10-A), (10-B), (13) and (20) regarding filing of counter-claim/set-off, verification of counter-claim/set-off in a manner similar to the pleadings before Civil Court, evidence by way of affidavit and provisions regarding cross-examination in rules; demonstrate that sufficient powers have been vested in the DRT to try claims raised by the borrower inextricably connected with the claim of the bank. These provisions are enacted to guard against multiplicity of proceedings in relation to similar subject matters, once before the DRT and another before the Civil Court. Thus, even Question no.3 was sought for to be answered in the affirmative.

Submissions on behalf of the respondent:

24. It is contended by Mr. Jaideep Gupta, learned senior counsel for the respondent, that the RDB Act was enacted with the objective of providing a summary procedure to enable banks and financial institutions to recover debts due to them in a speedy manner and it did not oust the jurisdiction of Civil Courts. The purpose of the statute would be defeated if there was an influx of civil suits filed by the borrowers against the lenders before the DRT. It was also pointed out that there were no provisions in the RDB Act to permit a counterclaim to be adjudicated independently even if the suit of

the plaintiff failed.

25. Learned senior counsel for the respondent submitted that as per ***Transcore v. Union of India***[6] the DRT is a creature of statute and has no inherent power, which exists in Civil Courts. In ***Swarka Prasad Agarwal v. Ramesh Chander Agarwal***[7] it was held that a provision seeking to circumscribe the jurisdiction of a Civil Court would require strict interpretation and the Court ordinarily leans toward upholding the jurisdiction of the Civil Courts. Learned senior counsel also sought to rely on ***Nagri Pracharini Sabha v. Vth Additional District and Sessions Judge***[8] and ***Ramesh Chand Arwaitya v. Anil Panjwani***[9] to submit that a litigant having a grievance of a civil nature has an independent right to institute a civil suit; and that Civil Court can entertain a civil suit even where a special Tribunal conferred with the exclusive jurisdiction to try a particular class of cases exists.

26. It was, thus, urged that the judgment of this Court in ***Indian Bank*** case (supra) and ***Nahar Industrial Enterprises*** case (supra) had correctly declared the law on the subject.

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[6] (2008) 1 SCC 125
[7] (2003) 6 SCC 220
[8] (1991) Supp 2 SCC 36
[9] (2003) 7 SCC 350

The scheme of the RDB Act

27. Banks and financial institutions lend public money to assist entrepreneurs in their business. Thus, on one hand, there is the interest of public, whose funds are utilised, while on the other hand are the business establishments which need funds for their business. Banks and financial institutions in a sense are intermediaries in the process.

28. Litigation instituted by banks and financial institutions became coloured by gross delays in the civil proceedings, as a result of which defaulters were at a premium. Borrowers who maintained financial discipline were the ones at a disadvantage. The borrowing process was being misused and a large amount of public funds were stuck in litigation.

29. In order to expedite the recovery of dues, the RDB Act was enacted by Parliament on 27.08.1993 and brought into force w.e.f. 24.06.1993. The RDB Act provided for the establishment of a tribunal for expeditious adjudication and recovery of debts due to banks and financial institutions and for all matters connected therewith. The RDB Act is comprehensive in character in terms of providing the methodology towards the said objective.

30. In this regard, it would be apposite to note the Statement of Objects and Reasons for enacting the RDB Act:

> "Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. In 1981, a Committee under the chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the report of Narasimham Committee. Whereas on 30-9-1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs 5622 crores in dues of public sector banks and about Rs 391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country."

31. It is pertinent to note that a challenge was laid to the RDB Act as it originally did not contain any provisions allowing a defendant in an application filed by a bank to claim any setoff or counterclaim against them. This issue received consideration in ***Union of India and Another vs. Delhi High Court Bar Association and Others***[10]. By the time the judgment was made, the RDB Act was suitably amended by Act 1 of 2000 to include such provisions, and consequently the same were upheld.

The Statutory Framework

32. Chapter III of the RDB Act has the heading 'Jurisdiction, Powers and Authority of Tribunals'.

33. Section 17 of the RDB Act delineates the jurisdiction of the DRT as follows:

> "**17. Jurisdiction, powers and authority of Tribunals.—** (1) A Tribunal shall exercise, on and from the appointed day, 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.
>
> [(1A) Without prejudice to sub-section (1),—
>
> > (a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications

[10] (2002) 4 SCC 275.

under Part III of Insolvency and Bankruptcy Code, 2016 (31 of 2016).

(b) the Tribunal shall have circuit sittings in all district headquarters.]

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

[(2A) Without prejudice to sub-section (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).]"

34. The expression '*debt*', as used in Section 17, is defined under Section 2(g) of the RDB Act:

"**2. Definitions**.—In this Act, unless the context otherwise requires,—

[(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application 1 [and includes any

> liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;]]"

35. Section 18 creates a bar for the Civil Court in relation to matters specified under Section 17 of the RDB Act. It provides as under:

> "**18. Bar of jurisdiction**.—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17:
>
> [Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 (1 of 2013) under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.]"

36. Section 19 relates to the procedure before the DRT for the making of applications for recovery. It provides 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—
>
> > [(a) the branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being; or]

[(aa)] 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:

[Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004) for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.]

[(1A) Every bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2, may, at its option, opt to initiate proceedings under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) to recover debts, whether due before or after the date of commencement of the Enforcement of the Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 (1 of 2013) from any person instead of making an application under this Chapter.

(1B) In case, a bank being, multi-State co-operative bank referred to in sub-clause (vi) of clause (d) of section 2 has filed an application under this Chapter and subsequently opts to withdraw the application for the purpose of initiating proceeding under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) to recover debts, it may do so with the permission of the Tribunal and every such application seeking permission from the Tribunal to withdraw the application made under sub-section (1A) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided that in case the Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.]

(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 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 that Tribunal.

[(3) Every application under sub-section (1) or sub-section (2) shall be in such form, and shall be accompanied with true copies of all documents relied on in support of the claim along with 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.

[Explanation.—For the purposes of this section, documents includes statement of account or any entry in banker’s book duly

certified under the Bankers' Books Evidence Act, 1891 (18 of 1891).]

[(3A) Every applicant in the application filed under sub-section (1) or sub-section (2) for recovery of debt, shall—

(a) state particulars of the debt secured by security interest over properties or assets belonging to any of the defendants and the estimated value of such securities;

(b) if the estimated value of securities is not sufficient to satisfy the debt claimed, state particulars of any other properties or assets owned by any of the defendants, if any; and

(c) if the estimated value of such other assets is not sufficient to recover the debt, seek an order directing the defendant to disclose to the Tribunal particulars of other properties or assets owned by the defendants.]

[(3B)] If any application filed before the Tribunal for recovery of any debt is settled prior to the commencement of the hearing before that Tribunal or at any stage of the proceedings before the final order is passed, the applicant may be granted refund to the fees paid by him at such rates as may be prescribed.]

[(4) On receipt of application under sub-section (1) or sub-section (2), the Tribunal shall issue summons with following directions to the defendant—

(i) to show cause within thirty days of the service of summons as to why relief prayed for should not be granted;

(ii) direct the defendant to disclose particulars of properties or assets other than properties and assets specified by the applicant under clauses (a) and (b) of sub-section (3A); and

(iii) to restrain the defendant from dealing with or disposing of such assets and properties disclosed under clause

(c) of sub-section (3A) pending the hearing and disposal of the application for attachment of properties.]

[(4A) Notwithstanding anything contained in section 65A of the Transfer of Property Act, 1882 (4 of 1882), the defendant, on service of summons, shall not transfer by way of sale, lease or otherwise except in the ordinary course of his business any of the assets over which security interest is created and other properties and assets specified or disclosed under sub-section (3A), without the prior approval of the Tribunal:

Provided that the Tribunal shall not grant such approval without giving notice to the applicant bank or financial institution to show cause as to why approval prayed for should not be granted:

Provided further that defendant shall be liable to account for the sale proceeds realised by sale of secured assets in the ordinary course of business and deposit such sale proceeds in the account maintained with the bank or financial institution holding security interest over such assets.]

[(5) (i) the defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence;

(ii) where the defendant makes a disclosure of any property or asset pursuant to orders passed by the Tribunal, the provisions of sub-section (4A) of this section shall apply to such property or asset;

(iii) in case of non-compliance of any order made under clause (ii) of sub-section (4), the Presiding Officer may, by an order, direct that the person or officer who is in default, be detained in civil prison for a term not exceeding three months unless in the meantime the Presiding Officer directs his release:

Provided that the Presiding Officer shall not pass an order under this clause without giving an opportunity of being heard to such person or officer.

Explanation.—For the purpose of this section, the expression 'officer who is in default' shall mean such officer as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013).]

[(5A) On receipt of the written statement of defendant or on expiry of time granted by the Tribunal to file the written statement, the Tribunal shall fix a date of hearing for admission or denial of documents produced by the parties to the proceedings and also for continuation or vacation of the interim order passed under sub-section (4).

(5B) 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 within a period of thirty days from the date of such order failing which the Tribunal may issue a certificate in accordance with the provisions of sub-section (22) to the extent of the amount of debt due admitted by the defendant.]

(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 2 [the debt sought to be set-off along with original documents and other evidence relied on in support of claim of set-off in relation to any ascertained sum of money, against the applicant].

(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 3 [as may be prescribed].

[(10A) Every application under sub-section (3) or written statement of defendant under sub-section (5) or claim of set-off under sub-section (6) or a counter-claim under sub-section (8) by the defendant, or written statement by the applicant in reply to the counter-claim, under sub-section (10) or any other pleading whatsoever, shall be supported by an affidavit sworn in by the applicant or defendant verifying all the facts and pleadings, the statements pleading documents and other documentary evidence annexed to the application or written statement or reply to set-off or counter-claim, as the case may be:

Provided that if there is any evidence of witnesses to be led by any party, the affidavits of such witnesses shall be filed simultaneously by the party with the application or written statement or replies filed under sub-section (10A).

(10B) If any of the facts or pleadings in the application or written statement are not verified in the manner provided under sub-section (10A), a party to the proceedings shall not be allowed to rely on such facts or pleadings as evidence or any of the matters set out therein.]

[(11) Where a defendant sets up a counter-claim in the written statement and in reply to such claim 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 Tribunal shall decide such issue along with the claim of the applicant for recovery of the debt.]

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(13)(A) Where, at any stage of the proceedings, 3 [the Tribunal on an application made by the applicant along with particulars of property to be attached and estimated value thereof, or otherwise is satisfied], 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 the debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not

furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

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(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under 5 [sub-section (13)].

(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 realisation, 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 as defined under the Companies Act, 2013 (18 of 2013) and such company is under liquidation, the Tribunal may by an order direct that the sale proceeds of secured assets of such company be distributed in the same manner as provided in section 326 of the Companies Act, 2013 or under any other law for the time being in force.]

[(20) The Tribunal may, after giving the applicant and the defendant, an opportunity of being heard, in respect of all claims, set-off or counter-claim, if any, and interest on such claims, within thirty days from the date of conclusion of the hearings, pass interim or final order as it deems fit which may include order for payment of interest from the date on which payment of the amount is found due up to the date of realisation or actual payment.]

[(20A) Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim.]

(20AA) While passing the final order under sub-section (20), the Tribunal shall clearly specify the assets of the borrower which security interest is created in favour of any bank or financial institution and direct the Recovery Officers to distribute the sale proceeds of such assets as provided in sub-section (20AB).

(20AB) Notwithstanding anything to the contrary contained in any law for the time being in force, the proceeds from sale of secured assets shall be distributed in the following orders of priority, namely: —

(i) the costs incurred for preservation and protection of secured assets, the costs of valuation, public notice for possession and auction and other expenses for sale of assets shall be paid in full;

(ii) debts owed to the bank or financial institution.

Explanation.—For the purposes of this sub-section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency and bankruptcy proceedings are pending in respect of secured assets of the borrower, the distribution of proceeds from the sale of secured assets shall be subject to the order of priority as provided in that Code.]

[(21) (i) The Tribunal shall send a copy of its final order and the recovery certificate, to the applicant applicant and defendant.

(ii) The applicant and the defendant may obtain copy of any order passed by the Tribunal on payment on such fee as may be prescribed.]

[(22) The Presiding Officer shall issue a certificate of recovery along with the final order, under sub-section (20), for payment of debt with interest under his signature to the Recovery Officer for recovery of the amount of debt specified in the certificate.]

[(22A) Any recovery certificate issued by the Presiding Officer under sub-section (22) shall be deemed to be decree or order of the Court for the purposes of initiation of winding up proceedings against a company registered under the Companies Act, 2013 (18 of 2013) or Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009) or insolvency proceedings against any individual or partnership firm under any law for the time being in force, as the case may be.]

(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 finds 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 (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and 1 [every effort shall be made by it to complete the proceedings in two hearings, and] to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may made 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.]”

37. Section 31 provides for the transfer of pending cases before courts to the DRT on the date of establishment of the same:

“31. Transfer of pending cases.—(1) Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any court:

[Provided further that any recovery proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 (1 of 2013) under the Multi-State Co-operative Societies Act,

2002 (39 of 2002), shall be continued and nothing contained in this section shall apply to such proceedings.]

(2) Where any suit or other proceeding stands transferred from any court to a Tribunal under sub-section (1),—

(a) the court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made under section 19 from the stage which was reached before such transfer or from any earlier stage 2 *** as the Tribunal may deed fit."

__The reference before us__

38. The interplay of the provisions of the RDB Act and the Code has been discussed in the aforesaid judgment in ***Indian Bank's*** case (supra). We find it appropriate to extract the paragraphs which deal with this aspect:

"15. It is evident from Sections 17 and 18 of the Debts Recovery Act that civil court's jurisdiction is barred only in regard to applications by a bank or a financial institution for recovery of its debts. The jurisdiction of civil courts is not barred in regard to any suit filed by a borrower or any other person against a bank for any relief. It is not disputed that the Calcutta High Court had jurisdiction to entertain and dispose of C.S. No.7/1995 filed by the borrower when it was filed and continues to have jurisdiction to entertain and dispose of the said suit. There is no provision in the Act for transfer of suits and proceedings, except section 31 which relates to suit/proceeding by a Bank or financial institution for recovery of a debt. It is evident from Section 31 that only those cases and proceedings (for recovery of debts due to

banks and financial institutions) which were pending before any court immediately before the date of establishment of a tribunal under the Debts Recovery Act stood transferred, to the Tribunal. In this case, there is no dispute that the Debt Recovery Tribunal, Calcutta, was established long prior to the company filing C.S. No.7/1995 against the bank. The said suit having been filed long after the date when the tribunal was established and not being a suit or proceeding instituted by a bank or financial institution for recovery of a debt, did not attract section 31.

16. As far as sub-sections (6) to (11) of section 19 are concerned, they are merely enabling provisions. The Debts Recovery Act, as it originally stood, did not contain any provision enabling a defendant in an application filed by the bank/financial institution to claim any set off or make any counter claim against the bank/financial institution. On that among other grounds, the Act was held to be unconstitutional (see Delhi High Court Bar Association vs. Union of India AIR 1995 Delhi 323). During the pendency of appeal against the said decision, before this Court, the Act was amended by Act 1 of 2000 to remove the lacuna by providing for set off and counter-claims by defendants in the applications filed by Banks/financial institution before the Tribunal. The provisions of the Act as amended were upheld by this Court in Union of India vs. Delhi High Court Bar Association [2002 (4) SCC 275]. The effect of sub-sections (6) to (11) of Section 19 of the amended Act is that any defendant in a suit or proceeding initiated by a bank or financial institution can : (a) claim set off against the demand of a Bank/financial institution, any ascertained sum of money legally recoverable by him from such bank/financial institution; and (b) set-up by way of counter-claim against the claim of a Bank/financial institution, any right or claim in respect of a cause of action accruing to such defendant against the bank/financial institution, either before or after filing of the application, but before the defendant has delivered his defence or before the time for delivering the defence has expired, whether such a counter claim is in the nature of a claim for damages or not. What is significant is that Sections 17 and 18 have not been amended. Jurisdiction has not been conferred on the Tribunal, even after amendment, to try independent suits or proceedings initiated by borrowers or others against banks/financial institutions, nor the jurisdiction of civil courts

barred in regard to such suits or proceedings. The only change that has been made is to enable defendants to claim set off or make a counter-claim as provided in sub-sections (6) to (8) of Section 19 in applications already filed by the bank or financial institutions for recovery of the amounts due to them. In other words, what is provided and permitted is a cross-action by a defendant in a pending application by the bank/financial institution, the intention being to have the claim of the bank/financial institution made in its application and the counter-claim or claim for set off of the defendant, as a single unified proceeding, to be disposed of by a common order.

17. Making a counter claim in the Bank's application before the Tribunal is not the only remedy, but an option available to the borrower/defendant. He can also file a separate suit or proceeding before a civil court or other appropriate forum in respect of his claim against the Bank and pursue the same. Even the Bank, in whose application the counter-claim is made, has the option to apply to the tribunal to exclude the counter-claim of the defendant while considering its application. When such application is made by the Bank, the Tribunal may either refuse to exclude the counter-claim and proceed to consider the Bank's application and the counter-claim together; or exclude the counter-claim as prayed, and proceed only with the Bank's application, in which event the counter-claim becomes an independent claim against a bank/financial institution. The defendant will then have to approach the civil court in respect of such excluded counter claim as the Tribunal does not have jurisdiction to try any independent claim against a bank/financial institution. A defendant in an application, having an independent claim against the Bank, cannot be compelled to make his claim against the Bank only by way of a counter-claim. Nor can his claim by way of independent suit in a court having jurisdiction, be transferred to a Tribunal against his wishes.

18. In this case, the first respondent does not wish his case to be transferred to the Tribunal. It is, therefore, clear that the suit filed by the first respondent against the Bank in the High Court for recovery of damages, being an independent suit, and not a counter-claim made in the application filed by the bank, the Bank's application for transfer of the said suit to the Tribunal was misconceived and not maintainable.

> The High Court, where the suit for damages was filed by the company against the bank, long prior to the bank filing an application before the tribunal against the company, continues to have jurisdiction in regard to the suit and its jurisdiction is not excluded or barred under Section 18 or any other provision of Debts Recovery Act.”

39. On a plain reading of the provisions, the conclusion reached was that Section 17 of the RDB Act bars the jurisdiction of the Civil Court only in respect of applications filed by the bank or financial institution. This provision did not bar the jurisdiction of the Civil Court to try a suit filed by the borrower. There was also an absence of provisions in the Act for transfer of suits and proceedings except Section 31, which relates to pending suit proceedings by a bank or financial institution for recovery of debt.

40. It was noticed that the significant aspect of Sections 17 and 18 of the RDB Act was that even after establishment of the DRT, no jurisdiction had been conferred on it to try independent suits or proceedings initiated by the borrower or others against banks/financial institutions. What has been permitted is only a cross-action in the form of a counterclaim by a defendant in the pending application to facilitate a unified proceeding. The most significant aspect considered in this behalf is set out in para 17 extracted above - that a counterclaim in a bank’s application before the DRT was not

the only remedy, but an option available to the defendant borrower. The borrower was not precluded from filing a separate suit or proceeding before a Civil Court or other appropriate forum. Not only that, even the bank, in whose application a counterclaim is made, has the option to apply to the DRT to exclude the counterclaim of the defendant while considering its application. If the DRT were to find in the bank's favour, the defendant would have to approach the Civil Court in respect of such excluded counterclaim, as the DRT does not have jurisdiction to try an independent claim against the bank/financial institution.

41. The question thus arises as to whether the view expressed in ***Indian Bank*** (supra) is the correct legal proposition in view of certain earlier judgments as well as latter judgments. We may however notice that the earlier judgment in the case of ***Abhijit Tea Co. Pvt. Ltd.*** (supra), where an independent suit of a defendant was deemed to be a counterclaim and transferred to the DRT, was considered and differentiated in the ***Indian Bank*** case (supra). Although both were judgments of Coordinate Benches of this Court, ***Indian Bank***'s case (supra) opined that the transfer would only be possible if the subject-matter of the two suits was inextricably connected and where both parties consented to such transfer.

42. In the subsequent judgment in ***Ranjan Chemicals Ltd. And Another*** (supra), the Court went as far as to say that the transfer could be made of the civil proceedings to the DRT without consent of both the parties and that a claim in an independent suit could be considered as the claim for set-off or a counterclaim. This flip-flop-flip continued depending on the view that the Bench of two Judges wanted to take as thereafter in ***Nahar Industrial Enterprises Ltd.*** (supra), it was found that there was no reason to depart from the view taken in ***Indian Bank*** case (supra), as was sought to be done in ***Ranjan Chemicals Ltd. And Another*** case (supra), and that is how the reference arose.

<u>Our view:</u>

43. We must note at the threshold itself that there are no restrictions on the power of a Civil Court under Section 9 of the Code unless expressly or impliedly excluded. This was also reiterated by a Constitution Bench of this Court in ***Dhulabhai vs. State of Madhya Pradesh***[11]. Thus, it is in the conspectus of the aforesaid proposition that we will have to analyse the rival contentions of the parties set out above. Our line of thinking is also influenced by a Three-Judges Bench of this Court in ***Dwarka Prasad***

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[11] 1968 SCR (3) 660.

Agarwal (D) By LRs and Anr. v. Ramesh Chander Agarwal and Ors.[12] where it was opined that Section 9 of the Code confers jurisdiction upon Civil Courts to determine all disputes of civil nature unless the same is barred under statute either expressly or by necessary implication and such a bar is not to be readily inferred. The provision seeking to bar jurisdiction of a Civil Court requires strict interpretation and the Court would normally lean in favour of construction which would uphold the jurisdiction of the Civil Court.

44. Now, if we turn to the objective of the RDB Act read with the scheme and provisions thereof; it is abundantly clear that a summary remedy is provided in respect of claims of banks and financial institutions so that recovery of the same may not be impeded by the elaborate procedure of the Code. The defendant has a right to defend the claim and file a counterclaim in view of sub-Sections (6) and (8) of Section 19 of the RDB Act. In case of pending proceedings to be transferred to the DRT, Section 31 of the RDB Act took care of the issue of mere transfer of the Bank's claim, albeit without transfer of the counterclaim. Thus, if the debtor desires to institute a counterclaim, that can be filed before the DRT and will be tried along with

[12] (2003) 6 SCC 220.

the case. However, it is subject to a caveat that the bank may move for segregation of that counterclaim to be relegated to a proceeding before a Civil Court under Section 19(11) of the RDB Act, though such determination is to take place along with the determination of the claim for recovery of debt.

45. We are thus of the view that there is no provision in the RDB Act by which the remedy of a civil suit by a defendant in a claim by the bank is ousted, but it is the matter of choice of that defendant. Such a defendant may file a counterclaim, or may be desirous of availing of the more strenuous procedure established under the Code, and that is a choice which he takes with the consequences thereof.

46. We may notice that the RDB Act was amended from time to time, including by amendments made under Act 1 of 2000, Act 30 of 2004, Act 1 of 2013 and Act 44 of 2016. The anomaly, *inter alia*, initially sought to be cured was on account of the non-availability of provisions on counterclaim and set-off. It is to get over such a scenario that amendment through Act 1 of 2000 was made by the Legislature itself to cure the problem. The Legislature did not, at any stage, make any further amendment for excluding the jurisdiction of the Civil Court in respect of a claim of a defendant in

such a proceeding being filed along with the suit. The Legislature in its wisdom has also not considered it appropriate to bring any amendment to enhance the powers of the DRT in this respect.

47. We may also refer to the judgment of this Court in ***Transcore*** (supra) opining that the DRT, being a Tribunal and a creature of the Statute, does not have any inherent power which inheres in Civil Courts such as Section 151 of the Code.

48. We now draw our attention to Chapter 5 of the RDB Act, which deals with recovery of debt determined by the DRT. Section 25 of the RDB Act prescribes the mode of recovery of debts, which takes place pursuant to a certificate issued under sub-Section (7) of Section 19 to recover the amount of debt specified in the certificate by any of the modes specified therein. The expanse of the reliefs the defendant may claim in the suit proceeding can certainly go beyond mere adjustments of the amounts of claim, for which the DRT would not have any power.

49. Now, turning to the issue of the power of the Civil Court to transfer an independent proceeding instituted by a defendant to be tried alongside a recovery proceeding before the DRT. There is gainsay that there is no

specific power to transfer a suit to the DRT. A plaint can be returned only under the provisions of Order VII Rule 10 of the Code for the reasons specified therein. In the absence of such reasons, Section 151 of the Code cannot be utilised as a residuary power to achieve the transfer, which is really a consequence of return of the plaint when the grounds under Order VII Rule 10 of the Code are not satisfied. The absence of any legislative power cannot give a power by implication to the Civil Court. We believe that it would not be appropriate to read such power to transfer a suit to a DRT under Section 151 of the Code when the DRT is a creature of a statute and that statute does not provide for such eventuality.

50. We must also notice an important aspect that even where a defendant is to invoke the jurisdiction of the DRT by filing a counterclaim, the bank has a right to seek a relegation of that claim to the Civil Court and the DRT has been empowered to do so, *albeit*, at the final adjudication stage. This is so in view of the summary nature of remedy provided before the DRT and thus, if certain inquiries beyond the contours of what the DRT does are envisaged, a Civil Court remedy may be considered as appropriate.

51. Now coming to the question whether consent is required for the

transfer of a suit. We do believe that once we have opined that there is no power of transfer in the Civil Court, the consent or absence of it is not something which would lend such power to the Civil Court. The option before the defendant, who has instituted the suit, is clear - either he could file a counterclaim before the DRT or he could institute separate civil proceedings.

52. We however have a word of caution keeping in mind the nature of powers exercised by the DRT and the objective of its creation. The interpretations in ***Abhijit Tea Co.*** and ***Ranjan Chemicals*** (supra), seeking to give power of transfer to the Civil Court, whether by consent or otherwise, were apparently predicated on an apprehension that a defendant may launch a suit before the Civil Court in order to delay the proceedings before the DRT.

53. We certainly would not like that the process envisaged under the RDB Act be impeded in any manner by filing of a separate suit if a defendant chooses to do so. A claim petition before the DRT has to proceed in a particular manner and would so proceed. There can be no question of stay of those proceedings by way of a civil proceeding instituted by a defendant

before the Civil Court. The suit would take its own course while a petition before the DRT would take its own course. We appreciate that this may be in the nature of parallel proceedings but then it is the defendant's own option. We see no problem with the same as long as the objective of having expeditious disposal of the claim before the DRT under the RDB Act is not impeded by filing a civil suit. Thus, it is not open to a defendant, who may have taken recourse to the Civil Court, to seek a stay on the decision of the DRT awaiting the verdict of his suit before the Civil Court as it is a matter of his choice.

54. We thus make it abundantly clear that in case of such an option exercised by the defendant who filed an independent suit, whatever be the nature of reliefs, the claim petition under the RDB Act would continue to proceed expeditiously in terms of the procedure established therein to come to a conclusion whether a debt is due to a bank and/or financial institution and whether a recovery certificate ought to be issued in that behalf.

55. We may say that if the Legislature were to think otherwise, nothing prevented the Legislature nor prevents it now from making suitable amendments in the RDB Act to meet such a scenario.

56. In view of the discussion aforesaid, the questions framed above are to be answered as under:

(c) Is the jurisdiction of a Civil Court to try a suit filed by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a Bank or Financial Institution?

The aforesaid question ought to be answered first and is answered in the negative.

(a) Whether an independent suit filed by a borrower against a Bank or Financial Institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act by the DRT?

In the absence of any such power existing in the Civil Court, an independent suit filed by the borrower against the bank or financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act. However, the proceedings under the RDB

Act will not be impeded in any manner by filing of a separate suit before the Civil Court.

(b) If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?

Since there is no such power with the Civil Court, there is no question of transfer of the suit whether by consent or otherwise.

57. The aforesaid takes care of the reference.

58. Now coming to the factual scenario of the case. The fact is that the proceedings under the RDB Act in any case have reached a culmination with satisfaction of the claim and, thus, no proceedings instituted by the appellant are pending before the DRT. As for the suit, there is no question of a counterclaim or a transfer or any other manner other than trial of the suit instituted by the respondent. In fact, some part of the claim of the bank was not even allowed and some adjustments were directed to be made. Even thereafter so far as any other claims of the respondent are concerned, the DRT in terms of the order dated 19.05.2003 permitted the respondent to pursue the remedy in accordance with law - which can only mean the civil proceedings. Thus, the suit is liable to proceed accordingly.

***Conclusion*:**

59. The civil appeals are accordingly dismissed leaving the parties to bear their own costs.

60. The judgments in ***Abhijit Tea Co.*** (supra) and ***Ranjan Chemicals Ltd.*** (supra) are held not to be laying down the correct legal proposition. The judgments in ***Indian Bank*** (supra) and ***Nahar Industrial Enterprises*** (supra) are affirmed except to the extent that they allow the transfer of a suit from the Civil Court to the DRT.

.......................................J.
[Sanjay Kishan Kaul]

.......................................J.
[Abhay S. Oka]

.......................................J.
[Vikram Nath]

New Delhi.
November 10, 2022.