(2009) 12 CAL CK 0030

Calcutta High Court

Case No: E.C. No. 176 of 2009

HDFC Bank Ltd.		APPELLANT
	Vs	
Sima Mondal and Another		RESPONDENT

Date of Decision: Dec. 24, 2009

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 1, 19, 19(7), 2(2), 2(4)
- Constitution of India, 1950 - Article 226, 227
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 17, 17(1), 17A, 18, 19
- Sea Customs Act, 1878 - Section 193

Citation: (2010) 3 BC 397 : (2010) 1 CALLT 511 : 114 CWN 290 : (2011) 7 RCR(Civil) 2099

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: Anindya Kumar Mitra, Samrat Sen and Paritosh Sinha, for the Appellant;

Judgement

Sanjib Banerjee, J.

A Bank seeks to implement an arbitral award made on 21st July, 2009. It says that there is no petition filed by the judgment-debtors for setting aside the award. The Bank asserts that in view of an award becoming a deemed decree u/s 36 of the Arbitration and Conciliation Act, 1996 it has to be enforced as such under the CPC. The decree is less than two years old. There is no necessity for the judgment-debtors to be given immediate notice upon receipt of the execution proceedings. The simple prayer that the decree-holder has made, is for a direction on the receiver appointed in proceedings u/s 9 of the 1996 Act to encash a fixed deposit made by the receiver of the proceeds from the sale of the vehicle which was the subject-matter of the agreement.

2. The decree-holder understandably been taken a back that without there being any scope for opposition, the decree-holder has been called upon to demonstrate

that a Civil Court would have the authority to implement an award in respect of a matter that is capable of adjudication before a D.R.T. constituted under the RDDBFI Act, 1993. The question as to the jurisdiction of a Civil Court to implement such an award arises upon the definition of "debt" found in Section 2(g) of the RDDBFI Act, 1993.

3. Prior to the amending Act of 2000 that made substantial changes to the RDDBFI Act, 1993, "debt" was defined in such Act as follows:

2. Definitions.-In this Act, unless the context otherwise requires,-

(g) "debt" means any liability (inclusive of interest) which is alleged 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 whether payable under a decree or order of any Civil Court or otherwise and subsisting on, and legally recoverable on, the date of the application;

Section 2 (g) of the RDDBFI Act, 1993 has since introduced, inter alia, the expression "or any arbitration award" and it stands today reads thus:

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 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;

4. The definition of "debt" would imply that a liability which is claimed as due had to be owed to a member of a particular class of bodies; that the liability had to arise during the course of any business activity undertaken by a member of the class of bodies under any law for the time being in force that the liability could be in cash or otherwise, it could be secured or unsecured, or assigned or it could be payable under a decree or order of any Civil Court or under any arbitration award or otherwise or under a mortgage; that such liability had to be subsisting, and legally recoverable, on the date of the claim being launched before a Debts Recovery Tribunal u/s 19 of the Act.

5. Two other sections of the RDDBFI Act, 1993 need to be immediately seen. Section 18 of the Act prohibits any Court or other authority to exercise any jurisdiction in relation to matters specified in Section 17 thereof. The exception to such bar is made for the Supreme Court generally and for the High Court when exercising authority under Articles 226 and 227 of the Constitution. Section 17(1) of the RDDBFI

1993 confers jurisdiction on the D.R.T. to decide on claims from Banks and financial institutions for the recovery of "debts" due to such Banks and financial institutions. The two provisions read together confer jurisdiction on D.R.T. to receive claims of Banks and financial institutions covered by the said Act, in exclusion to Courts and other authorities. Section 18 refers to Section 17 and Section 17 includes the word "debt" in its plural form. Conventional wisdom would demand that upon the said Act coming into effect, claims made by Banks and financial institutions in respect of any debt as defined in the RDDBFI Act, 1993 may not be made before any Court or other authority. Since debt is defined as it now has been, to be a liability, inclusive of interest which s claimed as due from any person by a Bank during the course of any business activity undertaken by the Bank under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any Civil Court or any arbitration award or otherwise and subsisting and legally recoverable on the date of the application in such regard, a claim on account of such liability may apparently be carried only to a D.R.T. Sections 17 and 18 of the RDDBFI Act, 1993 provide

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.

(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 made, by a Tribunal under this Act.

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.

6. The bar u/s 18 of the RDDBFI Act, 1993 operates from the appointed day. The appointed day, u/s 2(c) of the Act, in relation, to a Tribunal or an Appellate Tribunal means the date on which such Tribunal is established. Since the bar u/s 18 has been extended to arbitration awards by the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 which came into effect on 17th January, 2000, the prohibition on Courts and other authorities entertaining a claim on account of a liability under an arbitration award would apply, if at all, from such date as, in the context of Section 18, the expression "appointed day" qua an arbitration award would necessarily imply the date on which the amending Act came into force.

7. The RDDBFI Act, 1993 is divided into several chapters. Chapter I is the preliminary part that contains the usual first section, that sets out the short title, extent, commencement and application of the Act, and the definition section. Chapter II is entitled "Establishment of Tribunal and Appellate Tribunal" and deals with such

matters that are not relevant in the present context. Chapter III covering jurisdiction, powers and authority of Tribunals consists of Section 17, 17-A and 18. Chapter IV lays down the procedure for the Tribunals and comprises Section 19 to 24. Section 19 details how an application is to be made to a Tribunal and the substantive process of adjudication before the Tribunal. Section 20 covers appeals to the Appellate Tribunal. Section 21 sets down the deposit to be made on filing an appeal. Section 22 deals on the procedure and powers of Tribunals and Appellate Tribunals. Section 23 permits a Bank or financial institution to authorise a legal practitioner or an officer to prosecute a claim on its behalf. Section 24 makes the provisions of the Limitation Act, 1963 applicable to an application made u/s 19 of the Act. Chapter V is entitled "Recovery of Debt Determined by Tribunal." Such chapter includes six sections from Section 25 to Section 30. Section 25 lays down the mode of recovery of debts and prescribes that the recovery officer shall, on receipt of the copy of the certificate u/s 19(7) of the Act, proceed to recover the amount of debt specified in the certificate by one or more of the three modes indicated : by attachment and sale of the movable or immovable property of the defendant; by arrest of the defendant and his detention in prison; and, by appointing a receiver for the management of the movable or immovable properties of the defendant. Section 28 deals with other modes of recovery. The other sections of Chapter V are not material for the present purpose. Chapter VI contains the miscellaneous provisions of Section 31, that may have passed its sell by date, provides for transfer of suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under (the) 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." Section 31-A has been introduced by the Amending Act of 2000. Of the seven sections bunched in Chapter VI of the Act Sections 31(1), 31-A (brought in by the amending Act of 2000) and Section 34 are of some relevance in the present case:

31. Transfer of pending cases.-(1) Every suit or other proceeding pending before any Court immediately before the date of establishment of Tribunal under this Act, being a suit or proceeding the cause of action where on 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.

31-A. Power of Tribunal to issue certificate of recovery in case of decree or order. -(1) Where a decree or order was passed by any Court before the commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 and has not yet been executed, then, the decree-holder may apply to the Tribunal to pass an order for recovery of the amount.

(2) On receipt of an application under Sub-section (1), the Tribunal may issue a certificate for recovery to a Recovery Officer.

(3) On receipt of a certificate under Sub-section (2), the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under this Act.

34. Act to have over-riding effect.-(I) Save as provided under Sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).

8. The decree-holder says that the overriding provisions of Section 34 of the RDDBFI Act, 1993 read with the bar u/s 18 thereof may not apply in respect of Section 36 of the 1996 Act since the non obstante clause in Section 34 of the RDDBFI Act, 1993 would not cover the provision in a later Act which is inconsistent with a provision of the earlier Act. But in view of the clear wording of Section 18 of the RDDBFI Act, 1993 and the expression "appointed day" therein in relation to arbitration awards implying the date on which the amending Act of 2000 came into effect, such argument may not be a complete answer to the question. There is a more substantial argument that is putforth on behalf of the decree-holder. It is submitted that Section 19 under Chapter IV of the RDDBFI Act, 1993 covers the process of adjudication of the claim made by a Bank or financial institution and Sections 25 and 28 provide for the mode of recovery of the amount adjudged to be due. The decree-holder says that what can be executed under the RDDBFI Act, 1993 is the amount specified in a certificate issued u/s 19(7) is thereof. The argument is that an arbitration award is rendered upon the culmination of a process of adjudication where the original cause of action merges in the award. And, if the word "debt" in Section 17 of the Act includes an arbitration award and such award is compulsorily required to be made a subject-matter of a de novo adjudication on an application before a Tribunal u/s 19 of the RDDBFI Act, 1993, that would lead to an absurdity. The decree-holder submits that since the word "application" is defined by Section 2(1)(b) to be an application made to a Tribunal u/s 19, if the provisions of the RDDBFI 1993 are literally construed and the entirety of the definitions of "debt" and "application" imputed to such words used in Section 17, the amount already adjudged to be due in an arbitration reference would have to be subjected to a second round of adjudication with the attendant consequence of a defence and counter-claim that failed earlier being permitted to be re-agitated. The

decree-holder exhorts that such an illogical construction should not be made that would rob the finality of an arbitration award.

9. The decree-holder says that the amending Act of 2001 introduced Section 31-A into the RDDBFI Act, 1993 to cover unexecuted decrees or orders passed by any Court to the commencement of the amending Act to be executed under the RDDBFI 1993. Section 31-A(2) eliminates the second round of adjudication in respect of decrees or orders covered by Sub-section (1) of Section 31-A and requires a certificate to be issued by the Tribunal immediately upon an application being received to enforce such decree or order. Sub-section (3) provides for execution of a certificate issued under Sub-section (2) by treating it as a certificate in respect of a debt recoverable under the Act. The decree-holder refers to Section 42 of the 1996 Act that begins with a wide non obstante clause and provides that if an application under Part I of the 1996 Act with respect to an arbitration has been made in a Court that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of the relevant agreement and the arbitral proceedings shall be made to that Court alone and to no other Court. Section 5 of the 1996 Act is placed which contains a non obstante clause and records that in matters governed by Part I of the Act no judicial authority shall intervene except as provided in Part I of such Act. The decree-holder says that since the 1996 Act is a complete code and has been drafted on the UNCITRAL model code following India being a signatory to an international convention, no municipal law-albeit a specialised statute as the RDDBFI Act, 1993 should be seen to affect the provisions of the 1996 Act unless specifically provided for. The decree-holder reminds that the ouster of the Civil Court''s jurisdiction should be strictly construed and it must be specifically ousted or be excluded by obvious implication.

10. The decree-holder claims that the mode of execution under the CPC is wider and more comprehensive and nothing in the RDDBFI Act, 1993 necessarily implies that the recovery of anything due under an arbitral award needs to be processed only under such Act. The decree-holder says that a Bank or a financial institution may refer a dispute which is otherwise capable of adjudication under the RDDBFI Act, 1993 to arbitration. The decree-holder relies on recent judgment of this Court in HDFC Bank Ltd. v. Bhagwandas Auto Finance Ltd. AP No. 633 of 2008, AP No. 634 of 2008 and AP No. 635 of 2008 delivered on 17th December, 2009 where it was held that notwithstanding the provisions of the RDDBFI Act, 1993 and the apparent exclusivity that it confers on D.R.Ts. to adjudicate claims by Banks and financial institutions in respect of business activity undertaken by them, it would be open for a Bank or a financial institution to refer such matter to arbitration and not avail of the process of adjudication under the said Act. The decree-holder suggests that once it is accepted that a claim which may be adjudicated under the RDDBFI Act, 1993 is also capable of being referred to arbitration, the necessary corollary would be that the law governing arbitration would thereafter take over and the RDDBFI Act, 1993 would not apply. There is considerable substance in such argument.

11. The decree-holder argues that there would be no logic in subjecting a Bank or a financial institution, for whose benefit the RDDBFI Act, 1993 has been brought in, to the constricted form of execution available under the RDDBFI Act, 1993 in relation to an arbitral award and leave open a constituent to avail of the wider powers of execution conferred on Courts the by CPC in respect of an award against a Bank or a financial institution that may be made by the same arbitral Tribunal.

12. The decree-holder relies on a judgment reported at Bhatia International Vs. Bulk Trading S.A. and Another, , where it was held that the 1996 Act is a consolidated and integrated Act and the general provisions thereof will apply to all chapters or parts unless the statute expressly stated that they were not to apply or, where, in respect of matter, there is a separate provision in a separate chapter or part. Paragraphs 14 and 15 of the report are instructive both in respect of the 1996 Act and as to general principles of statutory interpretation:

14. At first blush the arguments of Mr. Sen appear very attractive. Undoubtedly Sub-section (2) of Section 2 states that Part I is to apply where the place of arbitration is in India. Undoubtedly, Part II applies to foreign awards. Whilst the submissions of Mr. Sen are attractive, one has to keep in mind the consequence which would follow if they are accepted. The result would:

(a) amount to holding that the Legislature has left a lacuna in the said Act. There would be a lacuna as neither Part I or II would apply to arbitrations held in a country which is not a signatory to the New York Convention or the Geneva Convention (hereinafter called "a non-convention country"). It would mean that there is no law, in India, governing such arbitrations;

(b) lead to an anomalous situation, inasmuch as Part I would apply to Jammu and Kashmir in all international commercial arbitrations but Part I would not apply to the rest of India if the arbitration takes place out of India;

(c) lead to a conflict between Sub-section (2) of Section 2 on one hand and Sub-sections (4) and (5) of Section 2 on the other. Further, Sub-section (2) of Section 2 would also be in conflict with Section 1 which provides that the Act extends to the whole of India;

(d) leave a party remediless inasmuch as in international commercial arbitrations which take place out of India the party would not be able to apply for interim relief in India even though the properties and assets are in India. Thus, a party may not be able to get any interim relief at all.

15. It is thus necessary to see whether the language of the said Act is so plain and unambiguous as to admit of only the interpretation suggested by Mr. Sen. It must be borne in mind that the very object of the Arbitration and Conciliation Act, 1996, was to establish a uniform legal framework for the fair and efficient settlement of disputes arising in international commercial arbitration. The conventional way of

interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the Court has to choose that interpretation which represents the true intention of the Legislature. This task often is not an easy one and several difficulties arise on account of variety of reasons, but all the same, it must be borne in mind that it is impossible even for the most imaginative Legislature to exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. It is in such a situation the Court''s duty to expound arises with a caution that the Court should not try to legislate. While examining a particular provision of a statute to find out whether the jurisdiction of a Court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the Court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of Judges is to expound and not to legislate, the Courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the Courts would adopt, particularly in areas such as, constitutional adjudication dealing with social and defuse (sic) rights. Courts are, therefore, held as ''Finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing'' (see Corocraft Ltd. v. Pan American Airways All. E.R. 107 ID 732, State of Haryana v. Sampuran Singh AIR at p. 1957). If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity of anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results (see Johnson v. Moreton and Stock v. Frank Jones (Tipton Ltd.). In selecting out of different interpretations, the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things, as it may be presumed that the Legislature should have used the word in that interpretation which least offends our sense of justice. In Shannon Realities Ltd. v. Ville de St. Michel A.C. at pp. 192-93, Lord-Shaw stated:

''Where words of a statute are clear, they must, of course, be followed, but in Their Lordships'' opinion where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

This principle was accepted by Subba Rao, J. while construing Section 193 of the Sea Customs Act and in coming to the conclusion that the Chief of Customs Authority was not an Officer of Customs (Collector of Customs v. Digvijaysinhji Spg. & Wvg.

Mills Ltd.).

13. The judgments reported at Mukesh K. Tripathi Vs. Sr. Divisional Manager, L.I.C. and Others, Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad and Another Vs. P.S. Rao, and The The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another, have been placed as to how the definition section of a statute is to be interpreted and as to the import of the expression "unless the context otherwise requires" that a definition section in a statute invariably carries. Such expression is found in the opening words of Section 2 of the RDDBFI Act, 1993.

14. An interpretation or a definition clause contained in a statute may imply a broader or a constricted meaning being given to the words or phrases defined if the definition is preceded by the expression, "unless the context otherwise requires". The ordinary and plain meaning of the words of a statute has to be given full importance. Yet, if a literal construction leads to an obvious absurdity the enactment is to be viewed as a whole and its intention determined by construing all the constituent parts thereof and not by detaching sections or plucking one word out or importing the entirety of the definition of a word into a section where such defined word is employed. In order to get its true import it calls for the enactment to be viewed in retrospect, the reasons for it being engrafted being appreciated and an understanding of the end and objects that it was to subserve. The statement of objects and reasons that prefaces the RDDBFI Act, 1993 refers to the then unsatisfactory procedure for recovery of debts due to Banks and financial institutions. The statement alludes to the report of a committee that recorded that as at 30th September, 1990 more than 15 lacs cases filed by public sector Banks and about 304 cases lodged by financial institutions remained pending in various Courts. The recovery of debts involved more than Rs. 5,622/- crore in dues of public sector Banks and Rs. 390/- crores of financial institutions. Such locking up of public money in litigation, the statement emphasises, inhabited proper utilisation and recycling of funds for the development of the country.

15. Historically, in the early 1980s, Banks and financial institutions found it suffocating to operate as funds and secured assets remained blocked in protracted litigation, whether they were recovery proceedings filed in regular Courts by them or genuine actions instituted by the constituents Banking business was then almost completely State-controlled and the worry was in public funds remaining entangled in time-consuming and ruinous Courts proceedings. There was a Tiwari Committee set up which recommended setting up independent Tribunals for recovering debts of Banks and financial institutions. The Narasimham Committee report thereafter culminated in first an ordinance and then the said RDDBFI Act, 1993.

16. The avowed purpose of the Act is to speed up the recovery of debts due to Banks and financial institutions. The stress in the Act is to abridge the process of adjudication. It would be absurd, in the light of the fundamental object of the Act, to

understand it to imply that the finality conferred on an arbitral award by Section 35 of the 1996 Act would be undone by such award being required to be made the subject of another round of adjudication u/s 19 of the RDDBFI Act, 1993.

17. Sections 25 and 28 of the RDDBFI Act, 1993 allow for the execution of the certificates issued u/s 19(7). Though Section 31A eliminates a second round of adjudication in respect of matters previously adjudicated upon, Sub-section (1) thereof is confined to "a decree or order...passed by any Court" before the amending Act of 2000 if such decree or order has not been executed. It is only such unexecuted decree or order that if made the subject-matter of an application before a Tribunal would immediately result in a certificate being issued and the consequent recovery of the amount covered thereby. The expression "whether payable under a decree or order of any Civil Court or any arbitration award" found in the definition of "debt" is not included in its entirety in the abridged procedure prescribed u/s 31A.

18. The authorities constituted under the RDDBFI Act, 1993 derive their powers under that statute and should not be seen to have the plenary or residual powers that ordinary Civil Courts possess. Since an arbitral award is not directly executable under the RDDBFI Act, 1993 nor can a certificate in respect thereof be issued immediately upon an application to implement to such award, an arbitral award will have to go through the rigmarole of the procedure recognised u/s 19 and not immediately be eligible for execution u/s 25 or Section 28 or Section 31A of the RDDBFI Act, 1993. It cannot be said that despite Section 31A of the RDDBFI Act, 1993 limiting the cases of abridged adjudication by a Tribunal to un-execution decrees or orders passed by any Court before the amending Act of 2000, such provision has to be understood to provide for a similar facility in respect of other decrees or orders passed by any Court or in respect of arbitration awards.

19. The matter directly in issue here is as to whether an arbitral award that is deemed to be a decree of a Court and enforceable under the CPC by virtue of Section 36 of the 1996 Act can be executed in a Civil Court. The decree-holder''s submission that Section 42 of the 1996 Act has a role to play in the assessment of the issue, does not appeal. Section 42 covers subsequent application arising out of an arbitration agreement and the arbitral reference when a previous application under Part I of the 1996 Act has been made in a particular Court. Section 42 will not apply if a previous application u/s 8 of the 1996 Act (which is also in Part I thereof) has been made to a Court or other judicial authority. Despite the non obstante clause in Section 42 it does not appear that it intends to cover execution proceedings since the jurisdiction of the Executing Court has to be seen on the basis of the CPC by virtue of Section 36 of the 1996 Act.

20. It is well accepted that when a matter which should have been provided in a statute is not provided therein the Court cannot supply the same for that would amount to legislation and not construction. There can be no presumption that a casus omissus exists in a statute. It would be even more difficult to presume casus

omissus in a provision introduced by amendment that extends the application of the statute but to a limited extent. Section 31A of RDDBFI Act, 1993 undoubtedly extends the application of the Act for recovering anything due under a decree or order passed by any Court before the commencement of the amending Act of 2000 which has remained unexecuted. The extent of the enlargement of the scope of recovery under the Act is restricted.

21. If the jurisdiction of a Civil Court cannot be ousted except by express provision or by obvious implication, the fact that the execution of an arbitral award is not fast tracked u/s 31A would go to show that the Civil Court''s jurisdiction under the CPC in such regard was not intended to be ousted. Any other construction would go against the ethos of the RDDBFI Act, 1993.

22. The decree holder here is entitled to proceed by way of execution in this Court since the receiver holds the fixed deposit in a Bank within jurisdiction.

23. There will be an order in ''terms of prayer (a) of Col. 10 of the tabular statement. The receiver will be paid a further remuneration of 400 GM by the decree-holder, which will be added to the claim in execution. Upon the proceeds of the fixed deposit being made over by the receiver and the receiver obtaining his remuneration, he will stand discharged without being required to file accounts.

24. The decree-holder will serve a copy of the application on the judgment-debtors. The matter will appear next on 4th February, 2010.

Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.