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I (2007) BC 92 (Karnataka HC)

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I (2007) BC 154 (Delhi HC) (DB)

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I (2007) BC 47 (DRAT—Mumbai) (DRAT/DRT)

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I (2007) BC 108 (Madras HC)

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I (2007) BC 94 (DRT—Chennai) (DRAT/DRT)

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I (2007) BC 26 (DRAT—Allahabad) (DRAT/DRT)

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I (2007) BC 53 (DRAT—Kolkata) (DRAT/DRT)

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I (2007) BC 86 (DRAT—Chennai) (DRAT/DRT)

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I (2007) BC 47 (DRAT—Mumbai) (DRAT/DRT)

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I (2007) BC 112 (SC)

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I (2007) BC 38 (DRAT—Allahabad) (DRAT/DRT)

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I (2007) BC 68 (DRAT—Allahabad) (DRAT/DRT)

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I (2007) BC 112 (SC)

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I (2007) BC 34 (DRT—Guwahati) (DRAT/DRT)

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I (2007) BC 58 (DRAT—Allahabad) (DRAT/DRT)

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I (2007) BC 7 (DRT—Kolkata) (DRAT/DRT)

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I (2007) BC 40 (DRAT—Kolkata) (DRAT/DRT)

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I (2007) BC 62 (DRAT—Chennai) (DRAT/DRT)

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I (2007) BC 112 (SC)

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I (2007) BC 34 (DRT—Guwahati) (DRAT/DRT)

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I (2007) BC 112 (SC)

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I (2007) BC 175 (Rajasthan HC)

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I (2007) BC 14 (SC)

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I (2007) BC 18 (DRAT—Allahabad) (DRAT/DRT)

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I (2007) BC 71 (DRT—Kolkata) (DRAT/DRT)

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I (2007) BC 73 (AP HC)

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I (2007) BC 33 (SC)

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I (2007) BC 33 (SC)

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I (2007) BC 33 (SC)

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I (2007) BC 44 (DRT—Allahabad) (DRAT/DRT)

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I (2007) BC 44 (DRT—Allahabad) (DRAT/DRT)

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I (2007) BC 44 (DRT—Allahabad) (DRAT/DRT)

—Object of enactment of DRT Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Distinction between provisions and applicability of two Acts—Discussed.

I (2007) BC 33 (SC)

—Payment of *ad valorem* Court fee prescribed under Rule 7 of DRT (Procedure) Rules, 1993 is payable on application under Section 17(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act in absence of any rule framed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Judgment of this Court in *Mardia Chemicals*, 110 (2004) DLT 665 (SC)=II (2004) SLT 991=II (2004) BC 397 (SC), states DRT acts in original jurisdiction under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—As far as levy of fee is concerned, terminology makes no difference—Proviso to Section 17(1) indicates different fees may be prescribed for making application by borrower—In view of judgment in *Madeva Upendra Sinai* case, this Court is of view that 2004 Order was issued with object of supplying deficiency, *viz.* levy of fees—By such levy of fees, nature and scope of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act not altered—It merely fills in deficiency and 2004 Order will continue to operate even after amending Act 30 of 2004 and till rules prescribed in terms of Section 2(s) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.

I (2007) BC 33 (SC)

—Possession of secured assets of borrower under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act comprehends power to take actual possession of immovable property—High Court not right in holding that borrower or any other person in possession of immovable property cannot be physically dispossessed at time of issuing notice under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act so as to defeat adjudication of his claim by DRT under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act and that physical possession can be taken only after sale is confirmed in terms of Rule 9(9) of 2002 Rules—Drawing of dichotomy between symbolic and actual possession does not find place in scheme of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act r/w 2002 Rules—Authorised Officer under Rule 8 has greater powers than even Court Receiver as security interest in property already created in favour of Banks/FIs—Third party interests are created overnight and in many cases third parties take up defence of being *bona fide* purchaser for value without notice—These types of disputes sought to be avoided by Rule 8 r/w Rule 9 of 2002 Rules—Drawing of dichotomy between symbolic and actual possession does not find place in scheme of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act r/w 2002 Rules.

I (2007) BC 33 (SC)

—Withdrawal of O.A. pending before DRT under DRT Act not pre-condition for taking recourse to

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—It is for Bank/FI to exercise its discretion as to cases in which it may apply for leave and in cases where they may not apply for leave to withdraw.

I (2007) BC 33 (SC)

STAMP DUTY—Promissory Note—Improperly Stamped—Admissibility.....(*See Promissory Note*)

I (2007) BC 17 (Madras HC)

STATE FINANCIAL CORPORATIONS—Claim secured creditors *vis-a-vis* customs—Dues of Corporation—Petitioner will have priority over Central Excise dues—Further in case of secured loan of Government and other creditors, priority will depend upon precedence of such loan—Security of Corporation being prior in point of time, in nature of mortgage of property, dues claimed by Corporation will have priority over dues of Customs.

I (2007) BC 82 (Bombay HC) (DB)

—Default in payment of amounts due—Auction of property by invoking provisions of Section 29, State Financial Corporation Act.....(*See RDDBFI*)

I (2007) BC 22 (DRAT—Delhi) (DRAT/DRT)

—Default in repayment of loan amount—Sale of unit postponed thrice—Petitioner not chosen to avail said opportunity—Respondent-SFC cannot postpone sale indefinitely to recover dues—No concrete proof that better offer made by petitioner—It cannot be said petitioner entitled for resale of property—Solemn undertaking given by petitioner to discharge loan but she has not chosen to do so—No statutory failure on part of Corporation or Corporation acted in unfair and unreasonable manner.

I (2007) BC 25 (Karnataka HC)

—Quashing of recovery certificate, recovery notices and sale proceedings of unit—Nothing brought on record to show property could have fetched better price—Decision of UPFC not unfair—No interference required.

I (2007) BC 130 (Allahabad HC) (DB)

—Writ Jurisdiction—Interference by Writ Court with action of Corporation only in two situations *viz.*, practical failure on part of Corporation or Corporation acted unfairly or unreasonably.

I (2007) BC 25 (Karnataka HC)

TAXATION (INCOME TAX)—Hypothecation of lease rentals—Tribunal is merely tracking lease rentals hypothecated in Bank's favour—It is not adjudicating any claim against Tax Recovery Officer—Attachment supersedes applicant Bank's right over security, *viz.*, lease rentals—Defendant No. 14 not entitled to lease rentals from postal authorities since applicant was entitled to same.

I (2007) BC 79 (DRT—Mumbai) (DRAT/DRT)

TENDER—Deposit of earnest money of Rs. 5,000/- —Mandatory condition—Rejection of tender for non-deposit of amount, justified—Non-deposit of earnest money not ancillary condition or mere irregularity on part of petitioner—In terms and conditions of tender consequence of non-deposit of earnest money clearly spelt out—Even if respondent accepted offer of tenderer not furnishing pan card/photograph, explosive licence and registration number of lorries offered by them, this itself will not create any vested right in favour of petitioner as per settled law—Nothing on record to show petitioner represented to respondent that his earnest money deposit can be adjusted from credit balance lying with respondent Bank—Petitioner, dealer of respondent at liberty to approach respondent in terms of Clause 4(E) of tender document for appropriate relief as it is stated lorry purchased by petitioner—Respondent to consider petitioner's case sympathetically.

I (2007) BC 171 (Delhi HC) (DB)

TRANSFER OF CASE—Dishonour of Cheque—Petitioner apprehending danger to his life at District Court, Gurdaspur—Facts referred to in petition do not reveal any cogent grounds for transfer but attempt to delay proceedings in complaints.

I (2007) BC 19 (P&H HC)

TRANSFER OF PROPERTY—Mortgage—Suit for redemption of mortgage after confirmation of sale of hypothecation and delivery of possession to auction purchaser not maintainable.

I (2007) BC 73 (AP HC)

—Part performance—Unregistered document—If transferee has come into possession by discharging certain obligations, his possession cannot be disturbed.

I (2007) BC 22 (DRAT—Delhi) (DRAT/DRT)

TRANSFER OF SUIT—Recovery of Loan Amount—Suit filed by first respondent against Bank in High Court for recovery of damages, being independent suit, and not counter-claim made in application filed by Bank, Bank's application for transfer of said suit to Tribunal misconceived and not maintainable.....(See *RDDBFI Act, 1993—Sections 2(g), 17, 18, 19, 19(6) to 19(11), 31*)

I (2007) BC 112 (SC)

UNJUST ENRICHMENT—Retention of benefit conferred by another, without offering compensation, in circumstances where compensation reasonably expected.

I (2007) BC 14 (SC)

WORDS AND PHRASES—“Attachment”—Meaning of.

I (2007) BC 147 (SC)

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I (2007) BC 25 (Karnataka HC)

BC.....Subject Index (Section Wise)

Civil Procedure Code, 1908

— **Section 11**—Basic ingredients.....(See *Res Judicata*)

I (2007) BC 18 (DRAT—Allahabad) (DRAT/DRT)

— **Section 100, Order 34 Rule 1**—Mortgage—Right of redemption—Extinguishment—Maintainability of suit.....(See *Transfer of Property Act, 1882—Sections 59A, 60*)

I (2007) BC 73 (AP HC)

— **Section 114, Order 47 Rule 1(1)**—Review of Judgment—Scope of review limited in its application—Review is alternative remedy to appeal but remedy substantially involving in itself risk factor—Only aggrieved person has *locus standi* to maintain review petition as Supreme Court held in *Satbir Singh's* case, AIR 1997 SC 169.

I (2007) BC 71 (DRT—Kolkata) (DRAT/DRT)

— **Section 151**—Inherent Powers—Exercise of—Extension of time for payment of balance amount.....(See *RDDBFI*)

I (2007) BC 5 (DRAT—Delhi) (DRAT/DRT)

— **Order 21 Rule 54, Order 21 Rule 67, Order 21 Rule 21A**—Suit for recovery of money—Non-payment of debt amount by appellant—Auction—Execution of order—Attachment of property—Proclamation—Trial Court disposed of application and brought legal heirs of V on record—Auction was in relation to property owned by appellant—Death of V immaterial—Appellant as JD desperately trying to set aside auction in order to save his property—In impugned order it is clearly observed all formalities and procedures for holding valid auction followed—Nothing in contrary placed on record by appellant.

I (2007) BC 175 (Rajasthan HC)

— **Order 22 Rule 3**—Impleadment of legal representatives—Defendant dead at time of filing of suit.....(*See Impleadment of Legal Representatives*)

I (2007) BC 111 (P&H HC)

— **Order 38, Order 21**—Distinction—Attachment before judgment in terms of Order 38 of CPC and attachment for execution of decree under Order 21, CPC.

I (2007) BC 147 (SC)

Companies Act, 1956

— **Section 125**—Company Law—Attachment of Property by Revenue Recovery Officer—Attachment itself does not create any charge in property—By reason of attachment, no decree is passed.

I (2007) BC 147 (SC)

— **Section 446**—Company Law—Applicability of provisions of Companies Act—Attachment of Property—Save and except certain special statutes in relation to recovery of debts from properties of company directed to be wound up, provisions of Companies Act shall apply—Order of attachment made prior to passing of order of winding up may not be void—Execution proceedings must be allowed to continue with leave of Court in terms of Section 446, Companies Act.

I (2007) BC 147 (SC)

— **Sections 446, 537(2)**—Kerala Revenue Recovery Act, 1968—Section 71—Company Law—Recovery of Loan Amount—Recovery proceeding initiated against defaulting company under Revenue Recovery Act (Ker.)—Properties belonging to defaulting company attached—Company went for voluntary liquidation—Provisional Liquidator appointed—Appellant moved application seeking leave to proceed with sale of properties rejected on premise that charge in respect of alleged debt not registered with Registrar of Companies and it was unsecured creditor—View taken by Single Judge of High Court affirmed by Division Bench of High Court—Appellant is Government company—Its dues are not Government dues—By applicability of provisions of Kerala Revenue Recovery Act dues of Government company would not become dues of Government within meaning of Section 537(2), Companies Act—High Court committed no error in refusing to exercise its discretionary jurisdiction under Section 446 of Companies Act.

I (2007) BC 147 (SC)

— **Sections 483, 457(1)(c)**—Companies (Court) Rules, 1959—Rules 272, 273—Winding up of Company—Sale of Assets of Company—Tender—Execution of Sale Deed—Scope of provisions of Rules 272, 273 of Companies Rules—Neither sale notice nor terms and conditions of tender stipulated anywhere that sale deed would be executed in favour of purchaser only and not in favour of his nominee—Purpose of vesting control on Company Judge on sale of properties by Official Liquidator under Section 457 of Companies Act as well as Rules 272 and 273 is to ensure best possible price of properties is obtained for Company in liquidation and once Company Judge satisfied best possible price obtained for properties of Company in liquidation and confirmed same, not necessary for Company Judge to speculate objections which another tenderer who had submitted bid would take in case sale deed is executed in favour of nominee of successful bidder—Nominee in whose favour sale deed ought to have been executed not completely unconnected with purchaser—Arrangement between appellant and nominee is with view of avoid stamp duty and such arrangement should not be allowed by Court—Impugned order set aside.

I (2007) BC 20 (MP HC) (DB)

Companies (Court) Rules, 1959

— **Rules 272, 273**—Winding up of Company—Sale of Assets of Company—Scope of provisions of Rules 272, 273, Companies Rules.....[*See Companies Act, 1956—Sections 483, 457(1)(c)*]

I (2007) BC 20 (MP HC) (DB)

Constitution of India, 1950

— **Article 141**—Law declared by Supreme Court shall be binding upon all Courts and all Tribunals

situated within territory of India.

I (2007) BC 71 (DRT—Kolkata) (DRAT/DRT)

— **Article 142**—Powers of Court—Many a time, after declaring law, this Court in operative part of judgment, gives some directions which may either relax application of law or exempt case on hand from rigour of law in view of peculiar facts or uncertainty of law to do complete justice—When High Courts repeatedly follow direction issued under Article 142 of Constitution by treating it as law declared by this Court, incongruously exemption/relaxation granted under Article 142 of Constitution becomes law, though at variance with law declared by this Court—Courts should be careful to ascertain and follow *ratio decidendi* and not relief given on special facts, exercising power under Article 142—One solution to avoid such situation is for this Court to clarify particular direction or portion of order is in exercise of power under Article 142 of Constitution.

I (2007) BC 112 (SC)

Criminal Procedure Code, 1973

— **Section 407 r/w Section 482**—Dishonour of Cheque—Transfer of case.....(*See Transfer of Case*)

I (2007) BC 19 (P&H HC)

— **Section 482**—Quashing of Proceedings—Dishonour of Cheque—Offence by company—No specific allegations against petitioner in complaint.....(*See Negotiable Instruments Act, 1881—Sections 138, 141*)

I (2007) BC 144 (Rajasthan HC)

Debts Recovery Tribunal (Procedure) Rules, 1993

— **Rule 7**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13(4), 17(1), 40—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2004—Clause (3)—Court fees—Words “*mutatis mutandis*” indicate measure is adopted for assessing fees required to be paid by borrower when he applies by way of application to DRT under Section 17(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act challenging action taken under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act by secured creditor.

I (2007) BC 33 (SC)

— **Rules 7, 12**—Review of Judgment—At time of filing evidence on affidavit in accordance with Rule 12, Bank unable to place original mortgage deeds.....[*RDDDBFI Act, 1993—Sections 19(2), 22(2)(e)*]

I (2007) BC 71 (DRT—Kolkata) (DRAT/DRT)

Debts Recovery Appellate Tribunal (Procedure) Rules, 1994

— **Rules 8, 8(2)(i)**—Appeal—Court fee on *ad valorem* basis—Banks not exempted from payment of *ad valorem* Court fee—Act does not provide for or makes any distinction between appeals and miscellaneous appeals—All appeals filed under Section 20 of Recovery of Debts Due to Banks and Financial Institutions Act only—No separate provision under Rules providing for payment of separate or different Court fee in respect of regular appeals and miscellaneous appeals—Bank not exempted from payment of Court fees on *ad valorem* basis—If Bank succeeds in appeal, claim of appellant Bank which is more than Rs. 43 lacs, claimed as debt due from respondents, becomes recoverable—Appellant-Bank directed to pay sum of Rs. 30,000/- minus Rs. 250/- within two weeks.

I (2007) BC 15 (DRAT—Mumbai) (DRAT/DRT)

— **Rule 12(5)**—Pre-deposit of amount—Setting aside *ex parte* order.....(*See RDDDBFI*)

I (2007) BC 40 (DRAT—Kolkata) (DRAT/DRT)

— **Rule 12(6)**—Cross-examination of Bank’s witness—Denial, not justified—Basis missing links found by Tribunal—Respondent-Bank directed to file documents regarding opening of account and transferring of amounts from account—Anomalies pointed out cannot be set at rest without cross-

examination of witness—It is must for arriving at proper justice—Impugned order set aside.

I (2007) BC 18 (DRAT—Allahabad) (DRAT/DRT)

Evidence Act, 1872

— Sections 101, 103—Burden of Proof—Scope of applicability of provisions—Discussed.

I (2007) BC 62 (DRAT—Chennai) (DRAT/DRT)

General Clauses Act, 1897

— Section 27—Presumption as to service of notice.....(See *Negotiable Instruments Act, 1881—Section 138*)

I (2007) BC 96 (Bombay HC)

Income Tax Act, 1961

— II Schedule Rule 61(b)—Setting aside sale—Denial—Justified—Presiding Officer committed no error in passing impugned judgment mainly on ground of non-deposit as required under Rule 61(b) of Income Tax Rules *vis-a-vis* under Section 29 of DRT Act.....(See *RDDBFI Act, 1993—Section 29*)

I (2007) BC 58 (DRAT—Allahabad) (DRAT/DRT)

— II Schedule Part III, III Schedule—Auction Sale—Challenge against under Section 29 of RDDBFI Act authorises Debts Recovery Officer to follow Second and Third Schedules to Income Tax, as far as possible with necessary modification.....(See *RDDBFI Act, 1993*)

I (2007) BC 86 (DRAT—Chennai) (DRAT/DRT)

Income Tax Rules, 1962

— Rule 26(1)(i)—Bank being secured creditor, its right superior to that of income-tax dues—Grant of term loan by applicant respondent No. 1—Defendant No. 14 sued since it has attached lease rentals in respect of certain portion of premises overlooking Bank's superior right—Borrower (defendant No. 1) and guarantors (defendant Nos. 2 to 9) not denied avilment of loan from applicant and giving guarantee to secure repayment—Creation of mortgage also undenied by defendant Nos. 5 to 9—Defendant Nos. 1 to 4 also admitted execution of deeds of hypothecation whereunder defendant No. 13 in possession of premises as under-Lessee (from defendant Nos. 1 to 4 who took from defendant Nos. 10 to 12, 5 and 9-Lessors), required to make payment directly to applicant Bank—Tribunal is merely tracking lease rentals hypothecated in Bank's favour—It is not adjudicating any claim against Tax Recovery Officer—Attachment supersedes applicant Bank's right over security, *viz.*, lease rentals—Defendant No. 14 not entitled to lease rentals from postal authorities since applicant was entitled to same.

I (2007) BC 79 (DRT—Mumbai) (DRAT/DRT)

Indian Stamp Act, 1899

— Section 35 Proviso, Article 49(b)—Promissory Note—Improperly stamped—Admissibility.....(See *Negotiable Instruments Act, 1881—Section 4*)

I (2007) BC 17 (Madras HC)

Kerala Revenue Recovery Act, 1968

— Section 71—Recovery of Loan Amount—Recovery proceeding initiated against defaulting company under Revenue Recovery Act (Ker.)—Properties belonging to defaulting company attached.....[See *Companies Act, 1956—Sections 446, 537(2)*]

I (2007) BC 147 (SC)

Limitation Act, 1963

— Article 37—Default in payment of instalment of loan amount—Repayment was to be made in 72 months—Last instalment as per loan agreement due in 2001—Applicant could in law waive default in payment of instalment—Limitation would start from last default which is well within 3 years—

Limitation with reference to mortgaged property is 12 years and against guarantors, limitation of 3 years would start from date of invocation of guarantee which is within 3 years—Against rest of defendants, there is continuing course of action arising on non-payment of monthly lease rentals.

I (2007) BC 79 (DRT—Mumbai) (DRAT/DRT)

— **Section 5**—Appeal—Condonation of delay in filing appeal—Sufficient cause—Explanation offered by applicant—Delay mainly occasioned in several stages of processing files and papers verification, final approval, etc. in connection with appeal by administrative machinery of public sector Bank, working of which almost at par with that of Government—Rest of delay may be attributed to inability of Advocate for Bank to take effective steps in filing appeal in time due to holidays—Explanations adequate, satisfactory and acceptable for condoning delay—No deliberate delay as matter of strategy, no laches or culpable negligence or ulterior notice on part of applicant Bank praying for condonation of delay—Sufficient cause for petitioner for delay in filing appeal and delay should be condoned.

I (2007) BC 53 (DRAT—Kolkata) (DRAT/DRT)

— **Section 5**—Limitation—Setting aside *ex parte* judgment—Delay of 186 days in filing application.....(See *RDDBFI*)

I (2007) BC 7 (DRT—Kolkata) (DRAT/DRT)

Maharashtra Land Revenue Code, 1966

— **Sections 32G, 169**—Claim of secured creditors vis-a-vis Central Excise dues—Determination of.....(See *State Financial Corporation Act, 1951—Sections 27, 29, 30, 31, 32A to 32F, 41, 41A, 44, 46*)

I (2007) BC 82 (Bombay HC) (DB)

Negotiable Instruments Act, 1881

— **Section 4**—Indian Stamp Act, 1899—Section 35 Proviso, Article 49(b)—Promissory Note—Document plainly is receipt for money containing terms on which it is to be repaid—No unconditional undertaking to pay, which is essential requirement of promissory note under Section 4 of Negotiable Instruments Act—Even if it is improperly stamped, it can be admitted on payment of required amount to make up such duty together with penalty as stipulated in proviso to Section 35 of Stamp Act.

I (2007) BC 17 (Madras HC)

— **Section 32**—Liability of maker of note and acceptor of bill—Both maker or drawer of negotiable instruments like bill of exchange as well as acceptor of bill bound to pay amount mentioned therein to holder at time or after maturity on demand.

I (2007) BC 47 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 32, 118**—Dishonour of bill of exchange—Suit for recovery of amount.....(See *RDDBFI Act, 1993—Section 20*)

I (2007) BC 47 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 99, 100, 101, 104**—Notice of Dishonour—Burden of proof—As per Section 101, Negotiable Instruments Act, protest under Section 100 of Act must contain name of person for whom and against whom instrument had been protested.

I (2007) BC 47 (DRAT—Mumbai) (DRAT/DRT)

— **Section 138**—General Clauses Act, 1897—Section 27—Dishonour of Cheque—Notice—Service of—Presumption—“Giving Notice” is not same as receipt of notice—Giving is process of which receipt is accomplishment—To raise presumption of deemed notice, there should be clear averment in complaint that complainant sent statutory notice on demand intimating dishonour of cheque and accused was evading service—In absence of such averment, presumption of deemed notice could not be raised—Notice sent by registered post to correct address of accused and same deemed to have been served on accused in terms of Section 27, General Clauses Act—Presumption available under Section 27 of General Clauses Act cannot be rebutted either by way of mere suggestion or mere denial in statement under Section 313, Cr. PC—Courts below rightly concluded notice duly served on accused.

I (2007) BC 96 (Bombay HC)

— **Section 138**—Dishonour of Cheque—Legally recoverable debt—Accused received from hands of complainant 1000 Magnum shares worth Rs. 49,500/- —Amount covered by cheque is consideration towards Magnum shares entrusted by complainant to accused for sale—Cheque is in respect of legally recoverable debt—Merely because SEBI banned bi-weekly settlement liability of accused to pay consideration of 1000 Magnum shares entrusted to him does not vanish—Accused being licensed share trader has to trade it in legal manner and give amount to appellant—He has no case that he sold shares or could not sell because of ban imposed by SEBI—Liability towards shares subsists with accused—Cheque issued in discharge of debt or liability incurred by him towards appellant—Case under Section 138 of Act made out and respondent liable for conviction—Taking into account absence of appellant in spite of second notice from this Court, consequent sentence shall be one day's imprisonment and fine.

I (2007) BC 3 (Karala HC)

— **Section 138**—Dishonour of Cheque—Transfer of case.....(*See Transfer of Case*)

I (2007) BC 19 (P&H HC)

— **Section 138**—Dishonour of Cheque—Account Closed—Provision of Section 138 applicable—Expression “on account maintained by him” used in Section 138 of Act cannot be interpreted to give it artificial or unrealistic meaning—Provision says cheque must be drawn on account maintained by accused with Bank—Whether it was “live” or “dead”, irrelevant—Accused must have an account which he maintains or maintained with Bank—Legislature has not used present continuous tense—Expression used in “on account maintained by him” and not “maintained by him”.

I (2007) BC 138 (HP HC)

— **Section 138**—Dishonour of Cheque—Liability—Submission that cheque was drawn by accused on account of association of which accused was member and accused not liable—Finding is without application of mind—Admitted position that accused had account with Bank which he closed as deposed by cashier of Bank and noticed by trial Magistrate—By no stretch it can be said accused had not maintained any account with Bank—Findings recorded by Trial Magistrate on this aspect perverse and not based on any material on record.

I (2007) BC 138 (HP HC)

— **Section 138**—Dishonour of Cheque—Quashing of Process—Amount alleged to be repaid by D.D. and complainant confirmed he received said D.D.—Accused No. 1 specifically mentioned that after entire amount is received, complainant would withdraw case pending in M.M. Courts—Said averment not denied or controverted by complainant—Process issued by M.M.'s Court quashed and set aside.

I (2007) BC 165 (Bombay HC)

— **Sections 138, 139**—Dishonour of Cheque—Presumption—Dispute as to signature on cheque by accused—Court takes upon itself scrutiny of signature by naked perusal without any experts opinion in that behalf—Court is final arbitrator to express opinion in matter of disputed handwritings but it is necessary that Court should be assisted by experts opinion or any other strong circumstances to prove execution of document—Court has done dangerous exercise of naked comparison of signatures of accused on cheque with other admitted signatures and conclude signature on cheque does not appear to be signature of accused.

I (2007) BC 173 (Karnataka HC)

— **Sections 138, 139**—Dishonour of Cheque—Presumption—Once issuance of cheque validly established, Presumption would arise under Section 139, Negotiable Instruments Act in favour of complainant.....(*See Dishonour of Cheque*)

I (2007) BC 173 (Karnataka HC)

- **Sections 138, 141**—Criminal Procedure Code, 1973—Section 482—Dishonour of Cheque—Offence by company—Liability arises on account of conduct, act or omission on part of person and not merely on account of holding office or position in company—No specific material on record for fastening liability under Section 141 of Act against petitioner—Only on ground that petitioner is director of company, order of cognizance passed by Trial Court *qua* petitioner cannot be sustained—Author of cheques in question is non-petitioner No. 3 on behalf of non-petitioner No. 2—Trial Court free to proceed against them—Order passed by Trial Court and by revisional Court *qua* petitioner set aside.

I (2007) BC 144 (Rajasthan HC)

- **Sections 138, 142 Proviso**—Dishonour of Cheque—Complaint—Limitation—Condonation of delay—Complaint filed after second notice served on applicant—Immediately after complaint filed, process was issued and no occasion for accused to raise question of limitation—Since he filed writ petition in this Court directly, trial Court had no occasion to consider aspect of case—Since proceedings arising out of complaint still pending and not finally concluded, provision of Section 142 proviso continue to apply to such proceedings—Benefit of amended Act available to complainant—Process issued by Magistrate without taking into consideration question of limitation, process issued by Magistrate, quashed—Complaint filed by complainant not quashed—Directions given to Magistrate accordingly.

I (2007) BC 169 (Bombay HC)

- **Sections 138, 142(a)**—Dishonour of Cheque—Complaint—Power of Attorney—Section 142 of Act does not specifically state payee or holder in due course of cheque shall lodge complaint himself.

I (2007) BC 108 (Madras HC)

- **Section 138(c)**—Dishonour of Cheque—Notice—Quashing of complaint being barred by limitation—Clause (c) of Section 138 does not state notice of 15 days to be given to drawer—What is required is intimation of dishonour of cheque be given to drawer of cheque and payee or holder in due course of cheques becomes entitled to file complaint in case drawer of cheque fails to make payment within 15 days of receipt of this notice—From date of receipt of notice, period of 15 days allowed to drawer of cheque to make payment—No such requirement that period of 15 days to be stipulated in notice—Notice dated 29.4.2002 valid notice and limitation to be counted from said notice—When period of limitation reckoned from service of notice dated 29.4.2002, complaint filed by respondent time-barred—Complainant cannot be permitted to give second notice and file complaint on that basis—Summoning order bad in law and set aside.

I (2007) BC 126 (Delhi HC)

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act)

- Auction Sale—Challenge against—Grounds—Properties not sold for proper price and auction purchaser did not pay balance of sale consideration within 15 days from date of auction—Submission of appellant sale notice not published in widely circulated newspaper, without merit—No material on record to show paper in which sale notice published was not having sufficient circulation—Further, after auction appellant could have challenged sale by depositing amount as required under Rule 61, if statement of appellant true—Nothing done by appellant except making of statement, property would fetch more price—Contention that auction purchaser allowed to pay 5% out of 25% of EMD on next date of auction not proper—Further Section 29 of RDDBFI Act authorises Debts Recovery Officer to follow Second and Third Schedules to Income Tax, as far as possible with necessary modification—Auction-purchaser deposited Rs. 90 lakh, which is about 73.6% of 25% of bid amount on date of auction itself—Balance 5% deposited on 8.6.2005—Balance of sale consideration allowed to be paid on 27.7.2005—Action of time given by Recovery Officer in his discretionary power and same cannot be held either as arbitrary or illegal—Appellant has not made out any case of irreparable injury caused to him except for statement, property would fetch more price—Rising of price of property cannot be held to be valid ground for setting aside sale—No illegality committed by Recovery Officer—No interference required in order

of DRT.

I (2007) BC 86 (DRAT—Chennai) (DRAT/DRT)

— Cross-examination of Bank's witness—Denial of—Appeal.....[See *Debts Recovery Tribunal (Procedure) Rules, 1994—Rule 12(6)*]

I (2007) BC 18 (DRAT—Allahabad) (DRAT/DRT)

— Delay in filing suit—No explanation given by respondent regarding such delay—No objection raised before Original Court, such objection cannot be entertained at appellate stage for first time.

I (2007) BC 38 (DRAT—Allahabad) (DRAT/DRT)

— Setting aside *ex parte* judgment—Condonation of delay—Delay of 186 days in filing application—Change of Counsel—No objection granted to erstwhile Advocate-on-record of miscellaneous applicants to their present Advocate-on-record—Bank not put forth sufficient evidence to contradict non-appearance of Counsel of applicant—Written statement filed by miscellaneous applicants not thoroughly considered—Liability of other defendants in concerned original application co-extensive with liability of principal borrower—Presence of other defendants before this Tribunal may be necessary to enable Tribunal effectively and completely to adjudicate upon original application—Original application restored to stage of proceeding for hearing as it stood immediately before said judgment and order passed.

I (2007) BC 7 (DRT—Kolkata) (DRAT/DRT)

— **Sections 2(g), 17, 18, 19, 19(6) to 19(11), 31**—Civil Procedure Code, 1908—Section 9—Recovery of Loan Amount—Transfer of suit—Suit filed by first respondent against Bank in High Court for recovery of damages, being independent suit, and not counter-claim made in application filed by Bank, Bank's application for transfer of said suit to Tribunal misconceived and not maintainable—High Court, where suit for damages filed by company against bank, long prior to bank filing application before Tribunal against company, continues to have jurisdiction in regard to suit—Its jurisdiction not excluded or barred under Section 18 of Act or any other provision of Debts Recovery Act.

I (2007) BC 112 (SC)

— **Sections 17, 18, 19(25), 20, 22(1), 22(2), 22(2)(e), 26, 29, 30, 34**—Remedy available to party, who is not party to proceedings, before Debts Recovery Tribunal but whose property declared by Tribunal to be validly mortgaged in favour of financial institution—Person other than party to proceedings, entitled to prefer appeal.

I (2007) BC 6 (Bombay HC) (DB)

— **Sections 17, 19, 19(1), 19(6), 19(7), 19(12), 19(18)**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13, 13(2), 13(3), 13(4), 17—State Financial Corporations Act, 1951—Sections 29, 31—SRFAESI and DRT Acts—Object of enactment of DRT Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Distinction between provisions and applicability of two Acts—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act enables banks and FIs to realise long-term assets, manage problems of liquidity, asset liability mis-match and to improve recovery of debts by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery and reconstruction—Enactment of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act is not derogation of DRT Act—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act removes fetters which were in existence on rights of secured creditors—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act is inspired by provisions of SFC Act, 1951—DRT Act provides for various modes of recovery—It incorporates even provisions of II and III Schedules to Income Tax Act—It provides for adjudication of disputes as far as debt is concerned—It covers secured as well as unsecured debts.

I (2007) BC 33 (SC)

— **Section 19**—Recovery of amount due in cash credit (hypothecation) limit account and term loan

account—This was sanctioned to defendant No. 1 through defendant No. 2 by applicant-Bank—Creation of equitable mortgage of immovable property of defendant No. 3 to secure credit facility—Defendants failed to adhere to terms and conditions agreed upon with applicant-Bank—Applicant-Bank issued notice to defendants but they did not regularize their accounts—Defendants not interested to contest case despite their knowledge and pendency of case and intentionally allowed to proceed *ex parte*—Defendant No. 3 raised several points in his written statement but did not file any proof in respect of same and badly failed to prove defence—Defendants not paid outstanding amount of Bank to tune of Rs. 15,92,991/- —Applicant-Bank prayed for issuance of recovery certificate against him—Applicant Bank able to establish its case and entitled to reliefs prayed for.

I (2007) BC 29 (DRT—Lucknow) (DRAT/DRT)

— **Section 19**—Recovery of Loan Amount—Default in repayment by respondent—Subject-matter of borrower's suit before High Court and Bank's application before Tribunal not inextricably connected—Bank sanctioned *ad hoc* Packing Credit Limit of Rs. 20 lacs and additional Rs. 5 lacs—Cause of action for Bank's application is alleged non-payment of amounts advanced to borrower, in pursuance of *ad hoc* limits sanctioned on 12.7.91 and 6.12.91—Subject matter of suit filed by borrower against Bank was whether Bank promised/agreed to advance certain monies, whether Bank committed breach in refusing to release such loans in terms of sanction letter, whether borrower failed to fulfil terms and conditions of sanction and Bank's refusal justified—While claim of Bank was for ascertained sum due from borrower, claim of borrower was for damages and assessment of quantum of such damages—No connection between subject matter of two suits and they are in no way connected.

I (2007) BC 112 (SC)

— **Section 19** r/w Rule 7 of DRT (Procedure) Rules, 1993—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 2(s), 17(1), 17(1) Proviso, 40(1)— Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2004—Clause (3)—Court fees—*Ad valorem* Court fee prescribed under Rule 7 of DRT (Procedure) Rules, 1993 is payable on application under Section 17(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act in absence of any rule framed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Judgment of this Court in *Mardia Chemicals*, 110 (2004) DLT 665 (SC)=II (2004) SLT 991=II (2004) BC 397 (SC), states DRT acts in original jurisdiction under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—As far as levy of fee is concerned, terminology makes no difference—Proviso to Section 17(1) indicates different fees may be prescribed for making application by borrower—In view of judgment in *Madeva Upendra Sinai* case, this Court is of view that 2004 Order was issued with object of supplying deficiency, *viz.* levy of fees—By such levy of fees, nature and scope of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act not altered—It merely fills in deficiency and 2004 Order will continue to operate even after amending Act 30 of 2004 and till rules prescribed in terms of Section 2(s) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.

I (2007) BC 33 (SC)

— **Section 19(1) 1st Proviso**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 —Sections 13, 13(2), 13(3A), 13(4), 13(11), 17, 35, 36—Withdrawal of O.A. pending before DRT under DRT Act not pre-condition for taking recourse to Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—It is for Bank/FI to exercise its discretion as to cases in which it may apply for leave and in cases where they may not apply for leave to withdraw—Reasons—Object of enactment of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Quick enforcement of security—Quick recovery of debt is important—It is object of DRT Act as well as Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act—But under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, authority is given to Banks/FIs, which is not there in DRT Act, to assign secured interest to securitisation company/asset reconstruction company—If borrower company does not repay, becomes defaulter and does not keep up value of financial asset which depletes then borrower fails in its obligation which results in mismatch between asset and liability in books of Bank/FI—Equity exists in Bank/FI and not in borrower—Apart from obligation to repay, borrower undertakes to keep margin and value of securities hypothecated so that there is no mis-match between asset and liability in book of Bank/FI—This obligation of borrower attracts provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.

I (2007) BC 33 (SC)

— Sections 19(2), 20(1), 21—Setting aside *ex parte* order—Pre-deposit of amount—Challenge against.....(See *RDDBFI*)

I (2007) BC 40 (DRAT—Kolkata) (DRAT/DRT)

— Sections 19(2), 22(2)(e)—Review of Judgment—Creation of Equitable Mortgage—Inability of Bank to place before Tribunal original title deeds executed by respondent Nos. 2, 5 to 9, claimed to be owner of mortgaged properties intended to be created in equitable manner by those defendants—Bank already discharged its duty by way of putting before Tribunal letter written by those defendants on 3.11.1988—Applicant Bank also filed before Tribunal original title deeds—Defendants never challenged said evidence or their signatures—Defendants who are to be effected adversely, found absent—To prove enforceable equitable mortgage, to be known as commercial mortgage, has been need of conflicting situation wherein mortgagor defendant strongly denies and refutes creation of such mortgage which is typically mortgage for any financial benefit—Bank has been able to prove case of equitable mortgage against respondent Nos. 5 to 9—Review petition preferred by reviewist petitioner Bank, allowed in absence of respondent-defendants—Petitioner Bank granted liberty to adduce original title deeds.

I (2007) BC 71 (DRT—Kolkata) (DRAT/DRT)

— Section 19(2)—Interest—Rate of—Loan to tune of Rs. 2.50 lacs granted for extension of premises of borrower-defendant No. 1.....(See *RDDBFI*)

I (2007) BC 38 (DRAT—Allahabad) (DRAT/DRT)

— Section 20—Term Loan—Default in payment of amount by defendant No. 1-partnership firm—Liability of defendant Nos. 8, 9, 10—Burden of proof—Plea by defendant Nos. 8 to 10 that they were not aware of any transaction between appellant Bank and defendant Nos. 1 to 7 and 11 and also loan facility given by appellant to defendant Company—That they never signed any documents of equitable mortgage of properties—When appellant Bank makes claim based on documents executed by defendant Nos. 8 to 10 and same denied by said defendants, burden is only upon suitor-appellant, who has come to Court making certain claims—Bank duty-bound to prove his claim and burden lies only on him and not upon defendants—Appellant not proved that defendant Nos. 8 to 10 signed in loan sanction letter and executed memorandum of deposit of title deeds, guarantee letter—In absence of same appellant not entitled to have decree against defendants 8 to 10.

I (2007) BC 62 (DRAT—Chennai) (DRAT/DRT)

— Section 20—Evidence Act, 1872—Section 105, 106—Overdraft Facility—Denial of by appellant—Burden of proof—It is clear case of appellant, that they run their business of their own sources and as such it is burden of appellant to prove such facts.

I (2007) BC 68 (DRAT—Allahabad) (DRAT/DRT)

— Section 20—Appeal—Comparison of signatures by Government handwriting expert—Plea of appellant-defendants that they had never taken any overdraft facility and run business from their own sources—By first order Bank was given option to get expert's opinion themselves, but by impugned order documents were asked to be sent to Government handwriting expert from Tribunal as documents

were lying in safe custody of Tribunal itself—Plea of *res judicata* and review got no application in circumstances of case—No error in passing impugned order regarding opinion of handwriting expert.

I (2007) BC 68 (DRAT—Allahabad) (DRAT/DRT)

— **Section 20**—Negotiable Instruments Act, 1881—Sections 32, 118—Bill Discounting Facility—Bill of Exchange—Non-payment of amount—Dishonour of bill of exchange—Suit for recovery of amount of bill with interest—Suit contested on ground of failure of consideration as goods supplied by drawer not as per specifications mentioned by appellants—Goods returned by appellants—Concluded contract between Bank and appellants by virtue of accepting bill of exchange by appellants drawn on respondent Bank in view of Section 32, Negotiable Instruments Act—Bank is not concerned with transaction, which takes place between drawer and acceptor of bill of exchange—Claim of Bank cannot be defeated for not making formal demand against appellants before filing claim in Court—Only because some credit entries shown in account of drawer Company maintained by respondent Bank it cannot be said amount of bill recovered by Bank as there is no credit entry in account of drawer for amount of bill of exchange.

I (2007) BC 47 (DRAT—Mumbai) (DRAT/DRT)

— **Section 20**—Amendment of Plaint—Delay and laches—Petition filed after long eight years regarding history as to how brought forward amount came in statement of accounts.....(See *RDDBFI*)

I (2007) BC 26 (DRAT—Allahabad) (DRAT/DRT)

— **Section 20**—Appeal—Court fee on *ad valorem* basis—Banks not exempted from payment of *ad valorem* Court fee—Act does not provide for or makes any distinction between appeals and miscellaneous appeals.....[See *Debts Recovery Appellate Tribunal (Procedure) Rules, 1994—Rules 8, 8(2)(i)*]

I (2007) BC 15 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 20, 30**—Transfer of Property Act, 1882—Section 53A—State Financial Corporation Act, 1951—Section 29—Recovery of Amount—Default in payment of amounts due—Auction sale of property—Tripartite agreement of sale—Effect of—Recovery officer held purchase by appellant illegal as Bank had charge over property—No evidence or document on record to prove Bank had charge over property in question—Property in question includes land, plant and machinery given in possession of appellant—It is not open to appellant-Bank to contend sale deed is unregistered document and no benefit could be derived by appellant—Respondent-Bank without any authority trying to lay hands on property not charged with it—Respondent-Bank taken recourse to provisions under SRFAESI Act, which amounts to Bank dragging appellant into further litigation—Recovery Officer and DRT not justified in rejecting objections filed on behalf of appellant—Impugned order set aside.

I (2007) BC 22 (DRAT—Delhi) (DRAT/DRT)

— **Sections 21 and 22**—Extension of time for payment of balance amount.....(See *RDDBFI*)

I (2007) BC 5 (DRAT—Delhi) (DRAT/DRT)

— **Section 22(2)(g)**—Setting aside *ex parte* judgment—Dismissal of restoration petition—Appeal against—Time sought to file written statement on ground of non-receipt of statement of accounts by learned Counsel for appellants—Steps taken by appellant's Counsel from time-to-time, might be for dilatory tactics but rejection of claim for filing written statement not proper—If Tribunal was not satisfied with ground, it would have granted last chance to appellant's Counsel to file written statement with imposition of heavy costs, negligence or dilatory tactics being taken by appellant's Counsel not be thrust upon appellants—*Ex parte* judgment set aside with pre-condition of deposit of Rs. 1 lac each by defendant-appellants.

I (2007) BC 1 (DRAT—Allahabad) (DRAT/DRT)

— **Section 22(e) r/w Section 26(2)**—Withdrawal/Cancellation/Modification of Judgment—Review of order by Tribunal—Certificate can only be withdrawn under Section 26(2), Recovery of Debts Due to Banks and Financial Institutions Act, when original judgment quashed or when 'debt' satisfied—Neither impugned judgment set aside nor 'debt' satisfied—Consequently, impugned certificate issued in

2001 cannot be withdrawn/cancelled under Section 26(2) of DRT Act.

I (2007) BC 34 (DRT—Guwahati) (DRAT/DRT)

— **Section 22(e) r/w Section 26(2)**—Review of Order—Scope of Power—Such power under Section 22 of Act to be regulated strictly in accordance with provisions of CPC—Review should not take in its ambit, re-opening of case for purpose of re-hearing and fresh decision of case—Scope of review limited and cannot be construed as appeal—Even if there can be two opinions/interpretations on impugned finding, by itself, cannot be termed as error apparent on face of record.

I (2007) BC 34 (DRT—Guwahati) (DRAT/DRT)

— **Section 29**—Income Tax Act, 1961—II Schedule Rule 61(b)—Recovery Certificate—Issuance of—Sale and confirmation of sale—Failure to repay loan amount—Mortgage of property—Sale in auction—Appellant did not raise any objection and slept over matter—When sale confirmed, he came up with objection—There was only single bidder—If appellant would have been vigilant, he could have brought other bidders to bid higher amount than respondent No. 2, although appellant was present all along in whole conduct of sale—Identification of land never challenged—Objection regarding valuation rightly discarded by Recovery Officer and Presiding Officer—No violation of principles of natural justice—Presiding Officer committed no error in passing impugned judgment mainly on ground of non-deposit as required under Rule 61(b) of Income Tax Rules *vis-a-vis* under Section 29 of DRT Act—Sale cannot be set aside as improper unless and until shown to be vitiated due to violation of principles of natural justice.

I (2007) BC 58 (DRAT—Allahabad) (DRAT/DRT)

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

— **Sections 2(s), 17(1), 17(1) Proviso, 40(1)**—DRT Act, 1993—Section 19 r/w Rule 7 of DRT (Procedure) Rules, 1993—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2004—Clause (3)—Court fees—*Ad valorem* Court fee prescribed under Rule 7 of DRT (Procedure) Rules, 1993 is payable on application under Section 17(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act in absence of any rule framed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Judgment of this Court in *Mardia Chemicals*, 110 (2004) DLT 665 (SC)=II (2004) SLT 991=II (2004) BC 397 (SC), states DRT acts in original jurisdiction under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—As far as levy of fee is concerned, terminology makes no difference—Proviso to Section 17(1) indicates different fees may be prescribed for making application by borrower—In view of judgment in *Madeva Upendra Sinai* case, this Court is of view that 2004 Order was issued with object of supplying deficiency, *viz.* levy of fees—By such levy of fees, nature and scope of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act not altered—It merely fills in deficiency and 2004 Order will continue to operate even after amending Act 30 of 2004 and till rules prescribed in terms of Section 2(s) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.

I (2007) BC 33 (SC)

— **Sections 13, 13(2), 13(3), 13(4), 17**—State Financial Corporations Act, 1951—Sections 29, 31—DRT Act, 1993—Sections 17, 19, 19(1), 19(6), 19(7), 19(12), 19(18)—SRFAESI and DRT Acts—Object of enactment of DRT Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Distinction between provisions and applicability of two Acts—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act enables banks and FIs to realise long-term assets, manage problems of liquidity, asset liability mis-match and to improve recovery of debts by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery and reconstruction—Enactment of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act is not

derogation of DRT Act—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act removes fetters which were in existence on rights of secured creditors—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act is inspired by provisions of SFC Act, 1951—DRT Act provides for various modes of recovery—It incorporates even provisions of II and III Schedules to Income Tax Act—It provides for adjudication of disputes as far as debt is concerned—It covers secured as well as unsecured debts.

I (2007) BC 33 (SC)

— **Sections 13, 13(2), 13(3A), 13(4), 13(11), 17, 35, 36**—DRT Act, 1993—Section 19(1) 1st Proviso—Withdrawal of O.A. pending before DRT under DRT Act not pre-condition for taking recourse to Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—It is for Bank/FI to exercise its discretion as to cases in which it may apply for leave and in cases where they may not apply for leave to withdraw—Reasons—Object of enactment of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Quick enforcement of security—Quick recovery of debt is important—It is object of DRT Act as well as Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—But under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, authority is given to Banks/FIs, which is not there in DRT Act, to assign secured interest to securitisation company/asset reconstruction company—If borrower company does not repay, becomes defaulter and does not keep up value of financial asset which depletes then borrower fails in its obligation which results in mismatch between asset and liability in books of Bank/FI—Equity exists in Bank/FI and not in borrower—Apart from obligation to repay, borrower undertakes to keep margin and value of securities hypothecated so that there is no mis-match between asset and liability in book of Bank/FI—This obligation of borrower attracts provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.

I (2007) BC 33 (SC)

— **Sections 13(2), 13(4)**—Recovery of Loan Amount—Filing of civil suit not bar for initiating legal action by respondent Bank under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—By initiating proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, respondent Bank committed no illegality—Respondent Bank legally empowered to initiate such proceedings to enforce its rights against security.

I (2007) BC 44 (DRT—Allahabad) (DRAT/DRT)

— **Sections 13(2), 13(4)**—Notice for Recovery of Amount—Amount alleged to be unlawfully drawn by applicants on basis of fraud committed by Bank Manager—In both notices amount recalled by respondent Bank one and the same—None of notices issued under ordinance—Only mistake committed by respondent Bank is while giving reference of notice under Section 13(2) in notice under Section 13(4) word 'ordinance' mentioned instead of Act—This is typographical mistake—By making wrong reference in another notice, it does not change nature of notice under Section 13(2) which is legally valid notice issued by respondent-Bank.

I (2007) BC 44 (DRT—Allahabad) (DRAT/DRT)

— **Sections 13(2), 13(4)**—Notice—Not necessary to give full details of NPA in notice—Sufficient to mention that account has become NPA along with quantum of loan *i.e.* liability recalled.

I (2007) BC 44 (DRT—Allahabad) (DRAT/DRT)

— **Sections 13(2), 13(4), 13(4A), 14, 17(1), 17(3)**—Security Interest (Enforcement) Rules, 2002—Rules 8, 8(4), 9, 9(6), 9(9)—Possession of secured assets of borrower under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act comprehends power to take actual possession of immovable property—High Court not right in holding that borrower or any other person in possession of immovable property cannot be physically dispossessed at time of issuing notice under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act so as to defeat adjudication of his claim by DRT under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act and that physical possession can be taken only after sale is confirmed in terms of Rule 9(9) of 2002 Rules—Drawing of

dichotomy between symbolic and actual possession does not find place in scheme of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act r/w 2002 Rules— Authorised Officer under Rule 8 has greater powers than even Court Receiver as security interest in property already created in favour of Banks/FIs—Third party interests are created overnight and in many cases third parties take up defence of being *bona fide* purchaser for value without notice—These types of disputes sought to be avoided by Rule 8 r/w Rule 9 of 2002 Rules—Drawing of dichotomy between symbolic and actual possession does not find place in scheme of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act r/w 2002 Rules.

I (2007) BC 33 (SC)

- **Sections 13(2), 13(4), 13(6), 13(7), 13(8)**—Enforcement of Security Interest—Scope of provision of Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Default in repayment of secured debt and his account by borrower to secured creditor—Account of borrower classified as NPA—Secured creditor may require borrower by notice in writing to discharge his liabilities within 60 days from date of notice failing which secured creditor shall be entitled to exercise all or any of rights given in Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Notice under Section 13(2) is not mere show-cause notice it constitutes action taken by Bank/FI for purposes of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.

I (2007) BC 33 (SC)

- **Sections 13(4), 17(1), 40**—DRT Rules, 1993—Rule 7—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2004—Clause (3)—Court fees—Words “*mutatis mutandis*” indicate measure is adopted for assessing fees required to be paid by borrower when he applies by way of application to DRT under Section 17(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act challenging action taken under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act by secured creditor.

I (2007) BC 33 (SC)

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2004

- **Clause (3)**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13(4), 17(1), 40—DRT Rules, 1993—Rule 7—Court fees—Words “*mutatis mutandis*” indicate measure is adopted for assessing fees required to be paid by borrower when he applies by way of application to DRT under Section 17(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act challenging action taken under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act by secured creditor.

I (2007) BC 33 (SC)

- **Clause (3)**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 2(s), 17(1), 17(1) Proviso, 40(1)—DRT Act, 1993—Section 19 r/w Rule 7 of DRT (Procedure) Rules, 1993—Court fees—*Ad valorem* Court fee prescribed under Rule 7 of DRT (Procedure) Rules, 1993 is payable on application under Section 17(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act in absence of any rule framed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Judgment of this Court in *Mardia Chemicals*, 110 (2004) DLT 665 (SC)=II (2004) SLT 991=II (2004) BC 397 (SC), states DRT acts in original jurisdiction under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—As far as levy of fee is concerned, terminology makes no difference—Proviso to Section 17(1) indicates different fees may be prescribed for making application by borrower—In view of judgment in *Madeva Upendra Sinai* case, this Court is of view that 2004 Order was issued with object of supplying deficiency, *viz.* levy of fees—By such levy of fees, nature and scope of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act not altered—It merely fills in deficiency and 2004 Order will

continue to operate even after amending Act 30 of 2004 and till rules prescribed in terms of Section 2(s) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.

I (2007) BC 33 (SC)

Security Interest (Enforcement) Rules, 2002

— **Rules 8, 8(4), 9, 9(6), 9(9)**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13(2), 13(4), 13(4A), 14, 17(1), 17(3)—Possession of secured assets of borrower under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act comprehends power to take actual possession of immovable property—High Court not right in holding that borrower or any other person in possession of immovable property cannot be physically dispossessed at time of issuing notice under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act so as to defeat adjudication of his claim by DRT under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act and that physical possession can be taken only after sale is confirmed in terms of Rule 9(9) of 2002 Rules—Drawing of dichotomy between symbolic and actual possession does not find place in scheme of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act r/w 2002 Rules—Authorised Officer under Rule 8 has greater powers than even Court Receiver as security interest in property already created in favour of Banks/FIs—Third party interests are created overnight and in many cases third parties take up defence of being *bona fide* purchaser for value without notice—These types of disputes sought to be avoided by Rule 8 r/w Rule 9 of 2002 Rules—Drawing of dichotomy between symbolic and actual possession does not find place in scheme of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act r/w 2002 Rules.

I (2007) BC 33 (SC)

State Financial Corporations Act, 1951

— **Sections 27, 29, 30, 31, 32A to 32F, 41, 41A, 44, 46**—Maharashtra Land Revenue Code, 1966—Sections 32G, 169—Dues of Corporation-petitioner will have priority over central excise dues—Customs cannot claim priority over dues of petitioner Corporation (SICOM)—Arrears of land revenue dues on account of land shall be paramount charge on land or every part thereof—These will have precedence over any other dues, debts, demand or claim—But other claims of State Government recoverable as arrears of land revenue get priority over all unsecured claims against any land or holder—In case of secured loan of Government and other creditors, priority will depend upon precedence of such loan—Security of Corporation being prior in point of time, in nature of mortgage of property, dues claimed by Corporation will have priority over dues of Customs—Impugned seizure of property by Customs department quashed and set aside.

I (2007) BC 82 (Bombay HC) (DB)

— **Section 29**—Default in payment of amounts due—Auction of property.....(*See RDDBFI Act, 1993—Sections 20, 30*)

I (2007) BC 22 (DRAT—Delhi) (DRAT/DRT)

— **Section 29**—Default in repayment of loan.....(*See State Financial Corporations*)

I (2007) BC 25 (Karnataka HC)

— **Section 29**—Quashing of recovery certificate, recovery notices and sale proceedings of unit—Default in payment of loan instalments by industrial unit—Corporation initiated recovery proceedings under Section 29 of Act—Wide publicity caused by UPFC for sale of Industrial Units—Advertisements issued in number of newspapers by UPFC—Nothing brought on record by petitioners to indicate two units would have fetched any better price and they have not been able to get better buyer—Decision taken by UPFC in executing sale deeds on basis of material before it not unfair nor *mala fide*—This Court cannot act as appellate body and substitute its decision for that taken by Corporation—No force in contention of learned Counsel for petitioners that both units could not have been sold by single transaction and no legal infirmity pointed out in disposing of both units by single transaction—No interference called for at behest of petitioners Industrial Unit which defaulted in repayment of loan.

I (2007) BC 130 (Allahabad HC) (DB)

— **Sections 29, 31**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13, 13(2), 13(3), 13(4), 17—DRT Act, 1993—Sections 17, 19, 19(1), 19(6), 19(7), 19(12), 19(18)—SRFAESI and DRT Acts—Object of enactment of DRT Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Distinction between provisions and applicability of two Acts—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act enables banks and FIs to realise long-term assets, manage problems of liquidity, asset liability mis-match and to improve recovery of debts by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery and reconstruction—Enactment of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act is not derogation of DRT Act—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act removes fetters which were in existence on rights of secured creditors—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act is inspired by provisions of SFC Act, 1951—DRT Act provides for various modes of recovery—It incorporates even provisions of II and III Schedules to Income Tax Act—It provides for adjudication of disputes as far as debt is concerned—It covers secured as well as unsecured debts.

I (2007) BC 33 (SC)

Transfer of Property Act, 1882

— **Section 53A**—Part performance—Unregistered document—If transferee has come into possession by discharging certain obligations, his possession cannot be disturbed.

I (2007) BC 22 (DRAT—Delhi) (DRAT/DRT)

— **Section 58(f)**—Equitable Mortgage—Burden of proof—Inability of Bank to place before Tribunal original title deeds executed by respondent—Review of judgment.....[See *RDDBFI Act, 1993—Sections 19(2), 22(2)(e)*]

I (2007) BC 71 (DRT—Kolkata) (DRAT/DRT)

— **Sections 59A, 60**—Civil Procedure Code, 1908—Section 100, Order 34 Rule 1—Suit for Mortgage—Right of redemption—Extinguishment—Suit not maintainable—Existence of right of redemption is *sine qua non*—Right of redemption of appellant-plaintiffs (subsequent purchasers) extinguished in view of final decree proceedings in suit for foreclosure filed by 1st respondent-Bank and subsequent sale and putting 2nd defendant in possession of property—Since D3 and D4 failed to pay amount due, final decree passed—Suit filed by plaintiffs for redemption one year thereafter not maintainable since right of redemption got extinguished even by date of suit for redemption—Whether plaintiff-appellants were not parties to suit for foreclosure filed by Bank, not material—Appellants not made out any ground under Section 100, C.P.C. to interfere with judgments and decrees of lower Appellate Court.

I (2007) BC 73 (AP HC)
