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IV (2006) BC 302 (Bombay HC)

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IV (2006) BC 302 (Bombay HC)

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IV (2006) BC 302 (Bombay HC)

—Evidence on Affidavit—Provisions contained in Section 145 not prospective but operate retrospectively—Code of Criminal Procedure and Evidence Act are general laws and rights created thereunder cannot be termed as substantive rights or vested rights of substantive nature causing any prejudice to accused by Amending Act of 2002 and in particular Section 145, Negotiable Instruments Act—Sub-sections (1) and (2) of Section 145, Negotiable Instruments Act fall within realm of procedural law, they would be applicable to pending cases since there is no vested right in accused in procedural law.

IV (2006) BC 302 (Bombay HC)

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IV (2006) BC 302 (Bombay HC)

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IV (2006) BC 379 (Karnataka HC)

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IV (2006) BC 229 (Orissa HC)

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IV (2006) BC 394 (Allahabad HC)

—Notice received by petitioner within fifteen days from date when cheques were dishonoured—Respondent stated in his objections that petitioner not only received lawyer’s notice but also gave his reply through his lawyer—Acknowledgement of postal department are clear proof of notice having been served upon petitioner before complaints in question lodged.

IV (2006) BC 379 (Karnataka HC)

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IV (2006) BC 217 (MP HC)

—Notice—Complaint could not be dismissed for mixing up number and date of cheque as mentioned in notice and complaint.

IV (2006) BC 265 (Bombay HC)

—Notice demanding payment of cheque amount—Validity—Subsequent notice—Entire tenor of two notices different—Notices in these cases do not intend to be notice under Section 138 of Act—Language of these notices also do not make notice under Section 138 of Act by default—Complainant not bound by notices—His case based on subsequent presentation of cheques before Bank and subsequent notice of demand not invalid.

IV (2006) BC 283 (Delhi HC)

—Offence by company—Quashing of proceedings—Petitioner involved in affairs of company not disputed—Petitioner-accused assisted respondent No. 4-accused No. 2, her husband to manage affairs of company—Accused No. 2, 100% paralysed below his waist—She was also initial subscriber in business—On basis of averments before M.M., summons rightly issued—No interference called for.

IV (2006) BC 260 (Delhi HC)

—Offence by company—Cheque in question signed by officer of company—Whether he was M.D. or Director in charge of day-to-day affairs of company would be additional point in favour of petitioner—Mere fact that he was officer of company and signatory of cheque would bring him within ambit of Section 141(2) of Act.

IV (2006) BC 391 (Delhi HC)

—Practice and procedure followed in M.M. Courts in Mumbai—In large number of cases, accused, after service of summons, file either revision or writ application/application under Articles 226/227 of Constitution or Section 482 Criminal Procedure Code for quashing of process—Complainant, if complaint is against company, arraign all directors as accused in complaint as result of which revision or writ petition filed by accused becomes inevitable and proceedings get delayed due to interim orders passed in revision or writ petitions—Service of summons on accused taken years and further delay in disposal of cases—In order to accomplish underline object of Act, guidelines/directions issued by this Court.

IV (2006) BC 302 (Bombay HC)

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IV (2006) BC 209 (Karnataka HC)

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IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

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IV (2006) BC 379 (Karnataka HC)

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IV (2006) BC 302 (Bombay HC)

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IV (2006) BC 254 (Bombay HC)

—Modes of paying money under decree—Deposit of any amount liable to be adjusted against interest and only thereafter against principal—Amount of Rs. 5 lacs deposited by judgment debtor in case was condition of stay of decree—It is not permissible for judgment debtor to contend amount of Rs. 5 lacs ought to be adjusted from principal amount—Nothing precludes decree holder from adjusting payment made by judgment debtor against principal amount—At no stage of time decree holder moved proceedings in this Court stating there was mistake in calculation—Only after full payment was made statement of account filed where calculations sought to be made in different manner— Arrangement was that there would be no further accrual of interest on that amount and said amount would be full and final—Judgment debtor paid more than Rs. 18 lacs to decree holder against decree for Rs. 9,24,666/- with interest—Decree stands satisfied.

IV (2006) BC 349 (Delhi HC)

—Setting aside sale—Exclusion of time of proceeding *bona fide* in Court without jurisdiction—Recovery of amount—*Ex parte* decree—Sale of house property in public auction in execution of money decree on 8.12.1998—Sale confirmed about five years later on 10.7.2003—Judgment debtor defendant and his wife filed petition under Order 21 Rule 90 for setting aside sale by judgment debtors before confirmation of sale—Dismissal of appeal permitting judgment debtors to deposit entire decretal amount and on such deposit to move application to set aside sale—Judgment debtors did not comply with said order but deposited entire decretal amount in September 2004 and filed application for setting aside sale—Another application filed stating entire period during which they were *bona fide* prosecuting matter in this Court as well as Court below be excluded as per Section 14 Limitation Act—Fact that they did not comply with order for deposit of entire decretal amount but waited for 1½ years shows entire litigation is lacking *bona fides*—Auction purchaser purchased property and deposited sale proceeds into Court and cannot be deprived of property which he got legally in auction held by Court.

IV (2006) BC 279 (AP HC)

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IV (2006) BC 409 (Delhi HC) (DB)

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IV (2006) BC 279 (AP HC)

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IV (2006) BC 404 (AP HC)

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IV (2006) BC 379 (Karnataka HC)

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IV (2006) BC 400 (Delhi HC)

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IV (2006) BC 302 (Bombay HC)

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IV (2006) BC 357 (Karnataka HC) (DB)

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IV (2006) BC 89 (DRAT—Chennai) (DRAT/DRT)

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IV (2006) BC 133 (DRAT—Chennai) (DRAT/DRT)

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IV (2006) BC 337 (Delhi HC)

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IV (2006) BC 365 (P&H HC)

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IV (2006) BC 279 (AP HC)

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IV (2006) BC 346 (Bombay HC)

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IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

—Quashing of possession notice, stay auction and sale of property—Claim of Bank not barred by

limitation—Respondent-Bank initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, within limitation by issuing notice under Section 13(2) of Act—Section 36 of Act as well as various provisions provide secured creditors can enforce its rights against security for legally valid claim—Claim should be within limitation at time of issuance of notice under Section 13(2) of Act and not at time of issuance of notice under Section 13(4) of Act.....(See *SRFAESI*)

IV (2006) BC 94 (DRT—Lucknow) (DRAT/DRT)

—Recovery of amount with interest—Limitation of 3 years against guarantors starts from when contract is broken or from specified time or happening of contingency constituting breach of promise—Defendants did not refute their liability beyond 3 years of filing of O.A.—O.A. is filed within 3 years of letters by which additional time of 6 months sought for buying back shares—It is filed within limitation.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

LOAN SCHEME BY GOVERNMENT—Credit-cum-Subsidy Scheme for Rural Housing—Direction to release sanctioned loan to petitioner—Scheme is part-credit and part-subsidy based—Rejection of loan to petitioner on extraneous considerations—Petitioner applied for loan of Rs. 40,000/- for construction of house on small plot inherited from ancestral property—Loan of Rs. 40,000/- and subsidy of Rs. 10,000/- sanctioned—Subsidy amount released—Petitioner mortgaged his plot of land in favour of PNB, incurred expenses for mortgage and changed his position to his detriment—Supreme Court applied principles of promissory estoppel in these circumstances in *Motilal Padampat Sugar Mills* case—No effort made to supply better particulars of so called *pucca* house of petitioner—Another ground of rejection that petitioner has annual income exceeding Rs. 32,000/- because he is owner of land measuring 3 acres 1 kanal and 6 marlas not proved—Petitioner completed necessary formalities for taking loan—There is nothing in scheme to disqualify person for benefits of scheme on ground of arrears in re-payment of loan of co-operative society—All grounds based on extraneous considerations—Respondents are directed to release loan amount of Rs. 40,000/- to petitioner accordingly.

IV (2006) BC 248 (P&H HC)

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IV (2006) BC 133 (DRAT—Chennai) (DRAT/DRT)

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IV (2006) BC 239 (Allahabad HC)

NEGOTIABLE INSTRUMENTS—Inchoate stamped instrument—Liability to pay amount to respondent Bank by appellant—When person signs and delivers to another paper stamped in accordance with law relating to negotiable instruments then in force in India, either wholly blank or having written incomplete negotiable instrument, he shall be liable upon such instrument in capacity he signed same to any holder in course for such amount—Appellant admits his signature and delivery among other documents—He now cannot turn around and say said instrument cannot be used against him as same is against provisions of Section 20 of Act—Documents duly executed and left by appellant in hands of Company and on strength of those documents, loan given by respondent Bank—Liability of appellant to respondent cannot be denied—If appellant aggrieved at all, his remedy lies elsewhere—No good and valid reasons to interfere with order passed by Debts Recovery Tribunal.

IV (2006) BC 104 (DRAT—Chennai) (DRAT/DRT)

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IV (2006) BC 302 (Bombay HC)

OFFENCE BY COMPANY—Dishonour of Cheque—Person to be prosecuted.....(*See Dishonour of Cheque*)

IV (2006) BC 260 (Delhi HC)

—Dishonour of Cheque—Cheque signed by officer of company—Whether he was M.D. or Director in charge of day-to-day affairs of company would be additional point in favour of petitioner.....(*See Dishonour of Cheque*)

IV (2006) BC 391 (Delhi HC)

PARTNERSHIP—Compromise decree for money—Challenge against.....(*See Execution*)

IV (2006) BC 254 (Bombay HC)

—Effect of Non registration—Maintainability of petition—Unregistered partnership firm—Scope of provisions of Sections 69(2) and 69(3) of Partnership Act—Provisions of Section 69(2) extend to “other proceedings” of any kind and not to be construed in light of words “claim of set-off”—Petitioner seeks to enforce arbitration clause by virtue of this proceeding—It is not covered under exceptions provided under Sub-sections (3) and (4) of Section 69, Partnership Act—Provisions of Section 69(2) of Partnership Act would apply to proceedings under Section 11(6) of Act—That being case, bar under Section 69(2) for initiating and/or instituting such proceeding unless firm is registered and persons suing shown in register of firm as partners in firm, would apply—Petitioner No. 1 not Registered Firm, nor petitioner Nos. 2 and 3 shown in Register of Firms as partners of said firm—Bar was absolute as registration of firm is mandatory pre-condition for institution of any suit or proceeding as contemplated under Sections 69(2) and 69(3) of Indian Partnership Act—Mandatory pre-condition not satisfied—Subsequent registration of firm would not cure this fatal defect.

IV (2006) BC 289 (Delhi HC)

POWERS OF APPELLATE COURT—Review of evidence in case of order of acquittal—Scope and ambit.

IV (2006) BC 295 (SC)

POWERS OF RECOVERY OFFICER—Arrest and Detention of Defaulter for recovery of debts amount.....(*See RDDBFI*)

IV (2006) BC 175 (DRAT—Mumbai) (DRAT/DRT)

PRACTICE AND PROCEDURE—Bank guarantee—Invocation of—Interference of Court permissible, if Bank guarantee invoked against terms of guarantee or if there is fraud.

IV (2006) BC 232 (AP HC)

—State, its corporations, instrumentalities and agencies have public duty to be fair for all concerned.

IV (2006) BC 357 (Karnataka HC) (DB)

PRINCIPLES OF PROMISSORY ESTOPPEL—Applicability to credit-cum-subsidy scheme—Grant of.....(*See Loan Scheme by Government*)

IV (2006) BC 248 (P&H HC)

PRINCIPLES OF RES JUDICATA—Rejection of Plaint—Inadequate Court fee—Applicant not preferred any appeal against said order, order became final—Subsequent suit based on same issue barred by Principles of *res judicata*.

IV (2006) BC 107 (DRT—Jabalpur) (DRAT/DRT)

QUASHING OF COMPLAINT—Negligence, default, breach of duty and misfeasance or breach of trust against officer of company—Petitioner seeking relief to relieve him from personal criminal liability with respect to liability of company in liquidation—Matter to be examined in detail to see whether conduct of petitioner was reasonable so as to extend benefit of exemption from criminal liability—Several cases of

dishonour of cheques, filed against petitioner who is said to be Executive Director of Company—Magistrate to examine whether petitioner was honest and reasonable in discharging his duties and to know whether it is only mere negligence, misfeasance and breach of duty—Petition seeking quashing of complaint premature.

IV (2006) BC 399 (Karnataka HC)

QUASHING OF FIR—Dishonour of Cheque—Basic ingredients to offence under Section 138, Negotiable Instruments Act not recited in complaint sent for investigation—FIR quashed.

IV (2006) BC 264 (Patna HC)

QUASHING OF PROCEEDINGS—Dishonour of Cheque—Notice—Careful scrutiny—Cheque amount mentioned in notice and allowance of Rs. 5,000/- given to petitioner on account of payment made by him—No ground to quash proceedings.

IV (2006) BC 217 (MP HC)

—Dishonour of Cheque—Proceedings not quashed as petitioner involved in affairs of company not disputed—Petitioner-accused assisted respondent No. 4-accused No. 2, her husband to manage affairs of company—Accused No. 2, 100% paralysed below his waist—She was also initial subscriber in business

IV (2006) BC 260 (Delhi HC)

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (RDDBFI)—Adjustment/appropriation of amount deposited by judgment debtor under Section 21 of RDDBFI Act—Provisions of Section 61, Contract Act not applicable—Respondent-Bank in fairness also agreed to give credit of sum of Rs. 80,237/- which is amount of interest accrued on fixed deposit amount of Rs. 7,67,821/-—After making all adjustments respondent Bank given figure of Rs. 18,45,329/- as amount due and payable by appellants to respondent-Bank—Respondent-Bank directed to give credit of sum of Rs. 7,67,821/- in account of appellants from date of FDR and permitted to encash said amount of FDR in account of appellants from date of FDR—It is agreed between parties that cheque in sum of Rs. 18,45,329/as amount due going to be tendered by appellants as full and final settlement of claim of respondent-Bank.

IV (2006) BC 144 (DRAT—Mumbai) (DRAT/DRT)

—Appeal—Limitation—Condonation of delay—Time required for obtaining certified copy of order can be excluded for purpose of limitation—Objection that appeal cannot be entertained unless delay is condoned on an application filed for condonation of delay and time required for obtaining certified copy of order cannot be excluded for purpose of limitation—Certified copy applied for before expiry of 45 days—Period prescribed under Section 20(3) of Act—It is mandatory to file certified copy along with memorandum of appeal, appellants filed appeal along with certified copy immediately after its receipt after prescribed period of 45 days—Appellate Tribunal can entertain appeal under Section 20(3), Proviso, even in absence of application for condonation of delay as there was sufficient cause for not filing appeal within prescribed period of 45 days.

IV (2006) BC 140 (DRAT—Mumbai) (DRAT/DRT)

—Appropriation of amount of deposit along with accrued interest towards 'debt' due from appellants to Bank—Rate of interest—From Statement of Account produced by Bank it appears Bank has adjusted amount of Rs. 7,67,821/- towards interest—Learned Counsel for appellants states appellants ought to have been given interest @ 18% on said amount from date of FDR as if appellants had given loan to respondent-Bank—Said argument does not stand—Said amount cannot by any fiction be deemed to have been given as loan to respondent-Bank by appellants which would fetch interest @ 18% p.a.

IV (2006) BC 144 (DRAT—Mumbai) (DRAT/DRT)

—Appropriation of Payments—Scope of provisions of Sections 59, 60 and 61 of Contract Act—Amount deposited under Section 21 of RDDBFI Act, which is not payment by debtor to creditor as contemplated by Sections 59, 60 and 61 of Contract Act—This amount was deposited in FDR in name of Registrar, DRAT—Provisions of Sections 59 to 61, Contract Act applicable when payments made by debtor by his own act and not when amount is deposited under statutory provision like Section 21 of RDDBFI Act—In absence of any provision equitable principle should not be lost sight of—Respondent-Bank directed to give

credit of amount deposited by appellants in account of appellants from date of FDR though amount deposited in name of Registrar, DRAT—If amount invested in other than creditor Bank, equity would not have been in favour of appellants.

IV (2006) BC 144 (DRAT—Mumbai) (DRAT/DRT)

—Arrest and Detention of Defaulter—Recovery of debts amount—Powers of Recovery Officer—Reasons given by Recovery Officer and as confirmed by DRT do not show any of appellants dishonestly transferred or concealed or removed any part of their properties—It is not pointed out that any of appellants had means to pay arrears which ran into crores or substantial part thereof and yet they refused or neglected to pay same—Recovery Officer attributed non-turning up of any bidders to scheduled auctions to appellants without giving reasons—All properties belonging to appellants attached by respondent-Bank—When co-owners' properties attached by respondent-Bank, who are neither debtors nor guarantors, they were within their rights to apply to Recovery Officer and make claim of their joint ownership or share in properties attached by respondent Bank—Appellants cannot be blamed if joint owners lodge their claim in respect of attached properties—Conditions for detention of appellants not fulfilled for invoking remedy under Section 25(b) of RDDBFI Act—Section 25(b) is applicable only when matter goes from DRT to Recovery Officer for recovery of amount on basis of recovery certificate issued by DRT and not during pendency of original application—Appeal decided by DRT casually by confirming order whereby invaluable personal liberty of citizens guaranteed under Article 21 of Constitution was at stake—Impugned orders set aside.

IV (2006) BC 175 (DRAT—Mumbai) (DRAT/DRT)

—“Debt”—Liability as claimed by Bank should be during course of business activity undertaking by Bank—Applicant Bank's claim made during course of its business activity—Claim is debt within meaning of RDDBFI Act.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

—“Debt” and “Security”—Deed of assignment states assignee shall have all rights and obligations under financial instruments as if they were executed by defendant No. 1 in favour of assignee—Deed also has list of financial instruments including all securities—Idle to contend assignment was of merely of debt.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

—“Debt”—Jurisdiction of DRT—Respondent claimed certain amount as ‘debt’ due to them from defendant Nos. 1 to 11, DRT has jurisdiction to entertain claim under provisions of RDDBFI Act—Respondents were not interested in subscribing and purchasing shares of defendant No. 12 Company except for purpose of giving loan to defendant No. 12 on security of shares and additional security of undertaking from promoters of company who are defendant Nos. 1 to 11—There was also pledge of shares of defendant No. 12 company held by defendant Nos. 1 to 11—Respondents are financial institution and provisions of RDDBFI Act applicable for recovery of its debts—Buy back transactions entered into by banking companies are prohibited by notification dated 27.6.1969—This point can be raised by defendants before DRT in original application—Claim may fail if any illegality pointed out in that respect but that is not ground to oust jurisdiction of DRT at threshold to entertain application—No reason to interfere with impugned order passed by DRT.

IV (2006) BC 165 (DRAT—Mumbai) (DRAT/DRT)

—“Debt”—Covers all actionable claim but not *vice versa*—Every debt is actionable claim but every actionable claim is not debt—Word debt not defined in Transfer of Property Act as appearing in definition of actionable claim and meaning to be derived from definition under Section 2(g) of RDDBFI Act—Word to be given meaning in its widest amplitude.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

—“Debt”—Ingredients—Though guarantee appears to have been for repurchase of company shares, what was essentially granted to company was financial assistance by subscribing to shares, mechanism employed for securing recovery—It is nobody's case applicant actually wanted to purchase shares—Letter of indemnity/guarantee shows it was executed for securing applicant's monies—Claim is clearly debt.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

—“Debt”—Expression not defined in Transfer of Property Act—Question whether meaning of word debt

in RDDBFI Act will be same as in Transfer of Property Act does not arise and cannot be considered.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

—Injunction to restrain continuance/repetition of breach—Injunction restraining respondent No. 1 Bank from putting to auction property in question—Auction sale of property by Recovery Officer, DRT in view of stay order by Competent Court, *non est*—Civil Court in its order directed no sale of premises in question, which fact brought to notice of Recovery Officer, yet Recovery Officer subjected property to sale—Subsequent thereto judgment debtor discharged his liability and Bank recovered its due under Recovery Certificate—Recovery Officer had no right to subject property to sale—Any auction pursuant thereto would be of no consequence—Impugned order and sale of property set aside—Court directs Recovery Officer to realize that he is under the law and bound by orders of Court.

IV (2006) BC 400 (Delhi HC)

—Interest—Award of—Discretion of Tribunal to award interest for *pendente lite* period and post-order period—Taking into consideration all elements involved in granting interest and several schemes floated by several Banks, Tribunal inclined to grant interest @ 9.5% simple for *pendente lite* period and post-order period/decreed period—Interest accordingly enhanced from 6% to 9.5%.

IV (2006) BC 89 (DRAT—Chennai) (DRAT/DRT)

—Interest—Award of—Discretion of Tribunal and Tribunal need not necessarily grant interest as claimed by Bank in plaint or in O.A.—Appellant not specifically prayed for grant of interest at quarterly rests in prayer column of plaint—Interest ordered by Tribunal in review application filed by respondent *i.e.* @ 16.5% p.a. simple, reasonable and meet ends of justice—It does not suffer from any infirmity to be interfered by Tribunal—As respondents have come forward to pay entire amount as ordered in review application, they are directed to pay entire decree amount together with interest @ 10.5% p.a. simple from date of decree till date of due payment.

IV (2006) BC 97 (DRAT—Chennai) (DRAT/DRT)

—Jurisdiction of DRT—Leave of Company Court not necessary for initiating proceedings under Recovery of Debts Due to Banks and Financial Institutions Act—Claim of various creditors can be decided only by DRT in accordance with Section 19(19) of Recovery of Debts Due to Banks and Financial Institutions Act r/w Section 529A of Companies Act and in no other manner—Observation of DRT that appellants have to file their claim before official liquidator incorrect and same set aside—Official liquidator to forward claim of priorities as contemplated under Sections 529 and 529A of Companies Act to Recovery Officer—Same shall be taken into account by Recovery Officer in distributing sale proceeds.

IV (2006) BC 89 (DRAT—Chennai) (DRAT/DRT)

—Jurisdiction of Tribunal—Transfer of O.A. to Tribunal—Justification—Applicant by notification is declared Financial Institution within meaning of RDDBFI Act—Claim constitutes ‘debt’ and is in excess of Rs. 10 lacs—Tribunal alone has jurisdiction.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

—Provisions of Sections 17, 18 not an impediment for exercise writ jurisdiction under Article 226 of Constitution.

IV (2006) BC 371 (AP HC)

—Recall of Order—Condition precedent—Formalities regarding payment of fees etc. to be complied with in view of provisions under Section 22(2)(e) of RDDBFI

IV (2006) BC 82 (DRAT—Allahabad) (DRAT/DRT)

—Recovery of amount along with costs, *pendente lite* and future interest—Sanction of cash credit facility and CANMOBILE Loan—Despite repeated requests and reminders and legal notice, defendants did not regularise accounts and accounts classified as N.P.A.—Bank filed 3 affidavits in evidence and oral and documentary evidence to prove its claim—No document filed in rebuttal by any of defendants—Guarantee deed executed by defendant Nos. 4, 5 and 7 for sum of Rs. 10 lacs makes their liabilities co-extensive with that of principal borrower—Creation of equitable mortgage of properties of defendant Nos. 3 and 7 and memorandum of deposit of title deeds and its extension only proved—No reason to disbelieve oral and

documentary evidence of Bank—Claim of applicant-Bank duly proved against all defendants 1 to 7 jointly and severally—Liability of defendant No. 5 limited to extent of Rs. 10 lacs—Suit decreed for sum of Rs. 19,55,960.78 along with costs, *pendente lite* and future interest @ 17.75% p.a @ 16% p.a. on CANMOBILE loan account.

IV (2006) BC 114 (DRT—Delhi) (DRAT/DRT)

—Recovery of Amount—Bank based its entire claim on 3 accounts—DRT rejected claim of petitioner-Bank mainly on ground that statements of accounts filed by petitioner-Bank not genuine and tainted with concealment of facts and arbitrary charging of higher rate of interest—DRT allowed claim of respondent No. 1 on ground that petitioner Bank charged higher rate of interest from June 1993 till 20.3.1999, without serving any notice of RBI circular charging rates of interest—Writ petitioner Bank furnished its statements of accounts in DRT—It became duty of DRT to examine correctness and genuineness of revised claim made by petitioner Bank—DRT justified in allowing respondents to file their affidavit and contest correctness and genuineness of revised statement of account—Respondents claim to be maintaining as many as 8 accounts with petitioner Bank and transactions taken place in those accounts required to be taken together for determining actual liabilities, if any, of party concerned—Impossible on part of DRT to examine correctness and/or genuineness of revised claim which petitioner made—Petitioner Bank already held liable to pay to respondents sum of Rs. 42,50,395/- Correctness of this amount remained unshaken—Petitioner Bank not disputed correctness of said finding of DRT—Neither DRT nor Appellate Tribunal acted illegally or unjustifiably in not allowing claim of petitioner Bank and in maintaining Bank's liability to pay sum of Rs. 42,50,395/-.

IV (2006) BC 384 (Gauhati HC)

—RDDDBFI *vis-a-vis* SRFAESI—Realisation of Secured Debt—Remedy available to Bank—Bank is given ample right not only under provisions of these two Acts, but also under provisions of various other enactments—Petitioner Bank did not avail any of these remedies—It cannot be permitted to enforce its right under Article 226 of Constitution when it has of its own volition not availed any of remedies available under RDDDBFI Act and other enactments.

IV (2006) BC 371 (AP HC)

—Setting aside *ex parte* judgment—Rejection of restoration petition—Non-service of notice—Suit for recovery of amount—Civil Judge transferred case to Tribunal in presence of appellant and Bank—There was no scope for Tribunal to give further notice to appellant—In view of consistency and chronology, no fault on part of Tribunal in not informing appellant about pendency of case—Appellant after getting copy of judgment slept over matter for more than one year—Restoration petition filed making concocted and manufactured story of negligence of lawyers not supported by affidavit from lawyers—Appellant not able to make out any case of restoration of original application—Non-liability of appellant is matter on merit of case—*Ex parte* judgment cannot be set aside.

IV (2006) BC 121 (DRAT—Allahabad) (DRAT/DRT)

—Setting aside *ex parte* judgment—Dismissal of restoration petition—Suit for recovery of amount—*Ex parte* decree—Notice served in name of Administrator and not Secretary—Secretary is main person who conducts business of unit and vital party in case—No attempt made to serve notice to him by Bank, *ex parte* judgment passed against Secretary unsustainable—Appellant has got good case in restoration petition—These facts not considered by PO, DRT while passing order of dismissal on restoration petition—When unit not properly represented while deciding original application *ex parte* judgment passed against unit cannot remain in vogue—Impugned order set aside.

IV (2006) BC 101 (DRAT—Allahabad) (DRAT/DRT)

—Transfer of DCP from DRT, Bangalore to DRT, Delhi—Exemption from attachment of property—Appellant sought transfer on ground that he was suffering from paralytic stroke and undergone heart surgery—PO got every right under Section 19(3) to send recovery certificate for execution from one Tribunal to other Tribunal—PO considered all aspects of case and dismissed application of appellant—No ground to interfere with said order and same confirmed—Observations made with regard to attachment of property unnecessary—Recovery Officer empowered to investigate claim and pass orders—Observation made by PO with regard to attachment of appellant's property set aside—Appellant permitted to put forward all his claim before Recovery Officer who shall investigate claim and pass appropriate orders—

Matter remanded to Recovery Officer of DRT, Bangalore for fresh disposal—Recovery Officer directed to take independent decision without being influenced by findings of PO.

IV (2006) BC 112 (DRAT—Chennai) (DRAT/DRT)

—Waiver of deposit of amount—Appeal—Maintainability—Minimum of 75% of tax to be deposited before appeal could be entertained—Validity of Section 21 of Act upheld—Nothing had been placed by petitioners to show it could not comply with conditions of Section 21—This is finding of fact and cannot be interfered with in exercise of writ jurisdiction.

IV (2006) BC 245 (Delhi HC) (DB)

RECOVERY SUIT—Condonation of delay in filing appeal—Delay of 47 days deserves to be condoned especially when it is remembered that right of one appeal is available in all jurisdictions and first Appellate Court is final Court of facts—Litigant not required to explain everyday's delay because it directly comes in conflict with observations made by Supreme Court in cases of *Land Acquisition Collector, Anantnag* and *Ram Nath Sao, II* (2002) SLT 240, case—Order passed by Lower Appellate Court set aside.

IV (2006) BC 365 (P&H HC)

—Extension of limitation period—There has to be either part payment or acknowledgement of liability as contemplated under Sections 18, 19 of Limitation Act—In absence of any such eventuality, limitation period prescribed cannot be extended—Cause of action for recovery of amount arose prior to October, 1976—Suit filed in 1983 clearly barred by law of limitation.

IV (2006) BC 346 (Bombay HC)

—Filing of Written Statement—Condonation of Delay.....(*See Written Statement*)

IV (2006) BC 337 (Delhi HC)

—Limitation—Recovery of amount with interest—Limitation of 3 years against guarantors starts from when contract is broken or from specified time or happening of contingency constituting breach of promise—Defendants did not refute their liability beyond 3 years of filing of O.A.—O.A. is filed within 3 years of letters by which additional time of 6 months sought for buying back shares—It is filed within limitation.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

—Loss of reputation—Counter Claim—Statement of respondent No. 2 that BOM, IOB and DB accepted him as guarantor for Rs. 15 crores and adjudged his worth and reputation—Accepting defendants as guarantors, by no stretch of imagination equivalent to their worth being to that extent, let alone any loss of reputation much less to that extent—Absolutely no pleading or proof about loss of reputation and extent thereof—Counter claim not allowed.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

—Recovery of Amount with Interest—Tripartite Agreement—Applicant got interest-free loan of Rs. 37.50 lacs from MOFPI which was to be paid after 3 years of commercial production of company, began in April, 1999—Applicant required to repay same till April, 2002—Applicant not clarified whether that loan is repaid—If repayment not made, applicant has done so at its own risk and peril and may be liable to pay interest @ 15% p.a. as provided in agreement—Applicant not entitled to interest on Rs. 37.50 lacs till end of 2002.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

—Recovery of Loan—Credits availed under Credit Cards by card holder does not represent loan under development scheme—Recovery of decreed amount not permissible under R.R. Act as notification issued under Section 71 of Act does not authorise recovery of such loan—Revenue recovery proceedings quashed initiated for recovery of amount decreed by Civil Court in respect of advances permitted to petitioner under Credit Card Account—Bank is free to proceed for recovery of balance amount including interest if any through execution proceedings.

IV (2006) BC 369 (Kerala HC)

—Rejection of Appeal—Want of affixation of *ad valorem* Court fees—Suit for recovery of amount—

Defective document in validated retrospectively for purpose of payment of Court fees as well as for purpose of limitation—Opportunity should have been given to petitioner to affix deficient Court fee before rejecting memorandum of appeal—Impugned order set aside—One month's time granted to petitioner to pay deficiency in Court fees.

IV (2006) BC 285 (P&H HC)

REGISTRATION—Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure—Petitioner-Registering Authority registered deed of cancellation containing stamp less than that of agreement, when it is strictly in accordance with Schedule 1A of Stamp Act—This cannot be ground for prosecuting petitioner—It does not cause any injury to second respondent.

IV (2006) BC 404 (AP HC)

REJECTION OF PLAINT—Inadequate Court fee—Applicant not preferred any appeal against said order, order became final—Principles of *res judicata*—Applicant filed present case again on basis of mortgage created by defendant Nos. 8 and 9, which was subject matter of former suit, not maintainable in view of Section 11 r/w Order 7 Rule 11(d), Civil Procedure Code—Applicant Bank required to pay Court fee of Rs. 40,42,232/- against which he paid only Court fee of Rs. 18,750/- —Bank not filed any application under Section 149 of Civil Procedure Code for depositing remaining Court fee—Applicant does not get any help from provisions of Order 7 Rule 13, Civil Procedure Code as Court fee required at time of filing former suit in District Court not paid in this case—In order to save Court fees of more than Rs. 40 lacs applicant Bank not preferred any appeal/review against order passed by predecessor and to take advantage of Court fees to be paid in DRT, has filed instant applicant on incorrect facts—Interim application filed by defendant Nos. 8 and 9 allowed as original application filed by applicants against all defendants not maintainable.

IV (2006) BC 107 (DRT—Jabalpur) (DRAT/DRT)

SRFAESI—Application—Limitation—Person aggrieved by any of measures taken under Section 13(4) of Act to make application within period of 45 days from date of measures—Respondent No. 1 not really aggrieved after symbolic possession taken by Bank because in that event, property could have been sold by Bank only subject to right of lessee—It cannot be said application under Section 17 of Act ought to have been filed against taking of symbolic possession on 5.11.2004—Respondent can be said to be aggrieved from measure taken by appellant Bank under Section 13(4), when physical possession of premises in occupation of respondent No. 1 Corporation taken—As physical possession taken by appellant on 5.2.2005, application made on 22.3.2005 under Section 17 of Act was within limitation.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

—Arbitration Agreement—Applicability of provisions SRFAESI Act.....(*See Arbitration Law*)

IV (2006) BC 85 (DRT—Nagpur) (DRAT/DRT)

—Attachment or Sale of Property—Notice under Section 13(2), SRFAESI Act—Exemption from attachment—To attract scope of Section 60(1)(c), CPC, petitioner must be in possession of house for agricultural purpose—His main source of income is agriculture—No evidence to show petitioner is agriculturist or any connection between such agricultural operations and secured house property—Petitioner not entitled to immunity under Section 60(1)(c), CPC—Writ petition filed only to delay proceedings—Even though civil proceeding is pending, Bank could call in aid provisions of SRFAESI Act—Option is given to Bank to move Civil Court or Tribunal under Act—No bar in invoking provisions of SRFAESI Act, after having approached Civil Court—Petitioner not proved house property is residential portion—Materials available clearly show premises are being let out to tenants and petitioner knowingly made false statement before Court—Petitioner not entitled to relief sought for.

IV (2006) BC 211 (Madras HC)

—Auction—Quashing of—Contention that in auction notice, machinery, which is not subject matter of hypothecation, published for sale—Plea to be raised before appropriate forum—Tribunal gave offer to petitioners to deposit some amount, to show *bona fide*, for stay of auction—Same offer repeated by this Court—Amount not deposited—Clear attempt to delay proceedings.

IV (2006) BC 393 (P&H HC) (DB)

—Jurisdiction of DRT—Validity of Lease—When important legal right of party sought to be taken away, *i.e.* right of mortgagor to give mortgaged property on lease, contrary intention to be unequivocally expressed in mortgage deed—In absence of such express condition or intention to contrary as envisaged under Section 65A(3), right vested under Section 65A(1) cannot be taken away—If mortgagor himself cannot evict lessee without following due process of law, appellant-Bank, which only steps into shoes of mortgagor, cannot evict respondent No. 1 Corporation without initiating eviction proceedings under provisions of Transfer of Property Act or Rent Control Act.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

—Lease—Injunction against borrower from disposing of any of properties secured to Bank until further orders—Borrower prohibited from only selling properties and not from leasing out properties—If there had been any prohibition from leasing out property, appellant would have initiated proceedings for contempt of Court, which was not done.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

—One Time Settlement—Respondent application for release of property and stay of proceedings allowed by Tribunal—Reliance placed on representation of respondent that OTS accepted—One Time Settlement brought about by threat and coercion and also rejected by Bank—Observation of Tribunal that there was OTS is patent error and liable to be set aside—Directions given by DRT to appellant to release property set aside—With regard to stay granted by DRT in respect of further proceedings of sale of property mentioned in S.A., appellant Bank entitled to proceed with proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Notice issued prior to date on which act amended—That fact not taken into account by Debts Recovery Tribunal in granting stay—Order of stay granted by Debts Recovery Tribunal also set aside.

IV (2006) BC 125 (DRAT—Chennai) (DRAT/DRT)

—Pendency of civil proceedings not a bar in invoking provisions of SRFAESI Act.

IV (2006) BC 211 (Madras HC)

—Possession of property by Bank leased in favour of third party—In both enactments, *i.e.* Maharashtra Cooperative Society Act and Securitization Act, appellant-Bank had right to take possession not for enjoying property as an owner but to sell property and recover their dues from sale proceeds thereof—Since lease is created in favour of third party, appellants will have to take possession of property subject to rights of lessee—No reason to interfere in impugned order, by which respondent No. 1 asked to pay rent to appellants before physical possession of property delivered to them, which was obtained by appellant-Bank previously.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

—Quashing of possession notice, stay auction and sale of property—Claim of Bank not barred by limitation—Respondent-Bank initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, within limitation by issuing notice under Section 13(2) of Act—Section 36 of Act as well as various provisions provide secured creditors can enforce its rights against security for legally valid claim—Claim should be within limitation at time of issuance of notice under Section 13(2) of Act and not at time of issuance of notice under Section 13(4) of Act—Two simultaneous proceedings can be initiated by respondent Bank for one claim—Action taken by Bank under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act legally valid.

IV (2006) BC 94 (DRT—Lucknow) (DRAT/DRT)

—Restraint order against bank from taking over physical possession of secured asset, *i.e.* mortgaged property—Power of mortgagor to lease mortgaged property not unfettered but conditioned under Sections 65A(1), 65A(2), 65A(3) of Transfer of Property Act—Unregistered lease created for alleged unlimited period through unregistered lease deed in complete contravention of Section 65A, Transfer of Property Act—Lessee can enjoy protection if lease is created by mortgagor in conformity with mandate of requirements laid down in Section 65A of Transfer of Property Act and not otherwise—Neither mortgagor nor lessee can defeat right of mortgagee and no lessee can claim any protection unless his tenancy is as per requirements of Section 65A of Transfer of Property Act—No interference required in orders passed by

DRAT.

IV (2006) BC 299 (Delhi HC) (DB)

—SRFAESI *vis-a-vis* Transfer of Property—Provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act or rules are in addition to and not in derogation of any other law for time being in force—Section 65A of Transfer of Property Act applicable—If appellant- Bank wants to take away rights of mortgagor under Section 65A of Transfer of Property Act to lease property they will have to ensure and prove strictly prohibition in mortgage deed to lease property.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

—Suit for recovery of amount along with interest—Liability of guarantors and mortgagors—Sanction of Cash Credit facility on Guarantee by Defendant Nos. 2 and 3—Directors and equitable mortgage of property—Defendant Nos. 3 and 4 are mortgagors—Defendant No. 1 is borrower company—2nd defendant admitted execution of letter of guarantee and it is not continuing guarantee—Cheques on record show defendant No. 2 signed till last which destroys defendant's contention that guarantee was for restricted period—O.A. against defendant No. 2 liable to be allowed—Almost all cheques filed on record co-signed by defendant No. 3—By giving signatures on blank cheques she is deemed to have authorised defendant No. 2 to fill in cheques—She cannot avoid liability befalling on her—Defendant No. 4 sued merely as mortgagor—No possibility of defendant No. 4 having himself deposited title deed—Sanction letter required creation of equitable mortgage by defendant No. 3 and not by defendant No. 4—O.A. as against defendant No. 4 liable to be dis-allowed—Applicant also not entitled to costs and entitled to interest @ 6% p.a.

IV (2006) BC 170 (DRT—Mumbai) (DRAT/DRT)

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IV (2006) BC 94 (DRT—Lucknow) (DRAT/DRT)

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IV (2006) BC 222 (AP HC)

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IV (2006) BC 121 (DRAT—Allahabad) (DRAT/DRT)

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IV (2006) BC 101 (DRAT—Allahabad) (DRAT/DRT)

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IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

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IV (2006) BC 112 (DRAT—Chennai) (DRAT/DRT)

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IV (2006) BC 397 (Jharkhand HC)

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IV (2006) BC 409 (Delhi HC) (DB)

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IV (2006) BC 232 (AP HC)

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IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

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IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

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IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

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IV (2006) BC 371 (AP HC)

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IV (2006) BC 272 (Delhi HC)

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IV (2006) BC 337 (Delhi HC)

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IV (2006) BC 121 (DRAT—Allahabad) (DRAT/DRT)

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IV (2006) BC 349 (Delhi HC)

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IV (2006) BC 279 (AP HC)

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IV (2006) BC 254 (Bombay HC)

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IV (2006) BC 346 (Bombay HC)

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IV (2006) BC 400 (Delhi HC)

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IV (2006) BC 388 (MP HC)

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IV (2006) BC 388 (MP HC)

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IV (2006) BC 388 (MP HC)

— Sections 442, 537—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 19(19) r/w Section 529A of Companies Act—Jurisdiction of DRT—Leave of Company Court not necessary for initiating proceedings under Recovery of Debts Due to Banks and Financial Institutions Act—Claim of various creditors can be decided only by DRT in accordance with Section 19(19) of Recovery of Debts Due to Banks and Financial Institutions Act r/w Section 529A of Companies Act and in no other manner—Observation of DRT that appellants have to file their claim before official liquidator incorrect and same set aside—Official liquidator to forward claim of priorities as contemplated under Sections 529 and 529A of Companies Act to Recovery Officer—Same shall be taken into account by Recovery Officer in distributing sale proceeds.

IV (2006) BC 89 (DRAT—Chennai) (DRAT/DRT)

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IV (2006) BC 399 (Karnataka HC)

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IV (2006) BC 357 (Karnataka HC) (DB)

— **Article 12**—“State”—Every legal entity of public character not necessarily become ‘authority’ within Article 12, Constitution—Even if body or organization creature of statute, unless such body or organization is entrusted with Governmental functions, fundamental to life of people, same cannot be treated ‘authority’ ‘instrumentality’ and ‘agency’ for purpose of Article 12 of Constitution—Person alleging entity to be State must satisfy Court of brooding presence of Government or deep and pervasive control of Government duly demonstrating real source of governing power.

IV (2006) BC 222 (AP HC)

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IV (2006) BC 357 (Karnataka HC) (DB)

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IV (2006) BC 357 (Karnataka HC) (DB)

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IV (2006) BC 302 (Bombay HC)

— **Article 21**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 25(b)—Income Tax Act, 1961—Rules 73, 74, Second Schedule—Arrest and Detention of Defaulter—Recovery of debts amount—Powers of Recovery Officer—Reasons given by Recovery Officer and as confirmed by DRT do not show any of appellants dishonestly transferred or concealed or removed any part of their properties—It is not pointed out that any of appellants had means to pay arrears which ran into crores or substantial part thereof and yet they refused or neglected to pay same—Recovery Officer attributed non-turning up of any bidders to scheduled auctions to appellants without giving reasons—All properties belonging to appellants attached by respondent-Bank—When co-owners’ properties attached by respondent-Bank, who are neither debtors nor guarantors, they were within their rights to apply to Recovery Officer and make claim of their joint ownership or share in properties attached by respondent Bank—Appellants cannot be blamed if joint owners lodge their claim in respect of attached properties—Conditions for detention of appellants not fulfilled for invoking remedy under Section 25(b) of RDDBFI Act—Section 25(b) is applicable only when matter goes from DRT to Recovery Officer for recovery of amount on basis of recovery certificate issued by DRT and not during pendency of original application—Appeal decided by DRT casually by confirming order whereby invaluable personal liberty of citizens guaranteed under Article 21 of Constitution was at stake—Impugned orders set aside.

IV (2006) BC 175 (DRAT—Mumbai) (DRAT/DRT)

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IV (2006) BC 232 (AP HC)

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IV (2006) BC 245 (Delhi HC) (DB)

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IV (2006) BC 248 (P&H HC)

— **Article 226**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 17, 18, 19(1)—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13(2), 37—Realisation of Secured Debt—Remedy available to Bank—Bank is given ample right not only under provisions of these two Acts, but also under provisions of various other enactments—Petitioner Bank did not avail any of these remedies—It cannot be permitted to enforce its right under Article 226 of Constitution when it has of its own volition not availed any of remedies available under RDBFI Act and other enactments.

IV (2006) BC 371 (AP HC)

— **Article 226**—Tender—Packages for rehabilitation and construction—Turnover given by petitioner is only provisional figure—No requirement in bid documents that award of Courts should be done chronologically on basis of date of submission of bids—This is purely administrative and ministerial function performed by respondent No. 1—This Court cannot impose its view on what contract respondent No. 1 should be awarded first and next—Respondent No. 1 had no animus against petitioner as many as 7 contracts awarded to petitioner in recent past—Since petitioner is out of running and respondent No. 2 is lowest bidder, nothing prevented respondent No. 1 from negotiating with respondent No. 2 to further lower bid price and save something for exchequer—In matters pertaining to award of contracts, there is huge amount of pressure on successful bidder because of uncertainty and Courts are also under tremendous pressure to decide cases within short time span so that development projects are not held up—Petitioner has unnecessarily rushed to Court and ought to have deliberated further before filing this petition making all kinds of allegations against respondents and trying to stall the development process.

IV (2006) BC 409 (Delhi HC) (DB)

— **Articles 226, 12**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13(2), 13(4), 17—Writ Petition—Maintainability—Default in repayment of loan amount—Notice under Section 13(2) of Act to enforce security—Non-payment of amount—Initiation of action under Section 13(4) of Act by 1st respondent and issue of auction notice—Petitioner filed writ petition seeking writ of *certiorari* to quash notice under Section 13(2) of Act issued by 1st respondent—Respondent-Bank no doubt obtained licence from RBI but it cannot be treated as “State” for purpose of Article 12 of Constitution—*Mandamus* cannot be issued to it as same does not perform

any public duty—Petitioner at liberty to file appeal under Section 17 of Act before competent authority—Writ petition not maintainable and misconceived.

IV (2006) BC 222 (AP HC)

— **Articles 226, 227**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 17, 18, 19(1)—Writ jurisdiction—Provisions of Sections 17 and 18 of RDDBFI Act does not bar jurisdiction of High Court under Article 226 of Constitution subject to other principles of law—Petitioner Bank straightaway approached High Court and did not approach DRT—Writ petition cannot be entertained even as per Section 18 of RDDBFI Act.

IV (2006) BC 371 (AP HC)

— **Articles 226, 227**—Subsidy—Central Interest Subsidy Scheme for November 1984 riots—Refund of excess interest charged on advances—Not “deserving case”—On effective date petitioner-borrowers had capacity to pay interest at prescribed rates—It cannot be said this opinion was arbitrary, whimsical or based on no materials—In exercise of jurisdiction under Articles 226 and 227 of Constitution Court would not function as Court of appeal and substitute its views in place of views taken by respondents—Interference in writ jurisdiction is called for, if there is arbitrariness or discrimination—No such case made in present petitions.

IV (2006) BC 272 (Delhi HC)

Contract Act, 1872

— **Sections 59, 60, 61**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 21—Appropriation of Payments—Scope of provisions of Sections 59, 60 and 61 of Contract Act—Amount deposited under Section 21 of RDDBFI Act, which is not payment by debtor to creditor as contemplated by Sections 59, 60 and 61 of Contract Act—This amount was deposited in FDR in name of Registrar, DRAT—Provisions of Sections 59 to 61, Contract Act applicable when payments made by debtor by his own act and not when amount is deposited under statutory provision like Section 21 of RDDBFI Act—In absence of any provision equitable principle should not be lost sight of—Respondent-Bank directed to give credit of amount deposited by appellants in account of appellants from date of FDR though amount deposited in name of Registrar, DRAT—If amount invested in other than creditor Bank, equity would not have been in favour of appellants.

IV (2006) BC 144 (DRAT—Mumbai) (DRAT/DRT)

— **Section 61**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 21—Adjustment/appropriation of amount deposited by judgment debtor under Section 21 of RDDBFI Act—Provisions of Section 61, Contract Act not applicable—Respondent-Bank in fairness also agreed to give credit of sum of Rs. 80,237/- which is amount of interest accrued on fixed deposit amount of Rs. 7,67,821/- —After making all adjustments respondent Bank given figure of Rs. 18,45,329/- as amount due and payable by appellants to respondent-Bank—Respondent-Bank directed to give credit of sum of Rs. 7,67,821/- in account of appellants from date of FDR and permitted to encash said amount of FDR in account of appellants from date of FDR—It is agreed between parties that cheque in sum of Rs. 18,45,329/as amount due going to be tendered by appellants as full and final settlement of claim of respondent-Bank.

IV (2006) BC 144 (DRAT—Mumbai) (DRAT/DRT)

Criminal Procedure Code, 1973

— **Section 296**—Negotiable Instruments Act, 1881—Sections 138, 145(2)—Dishonour of Cheque—Evidence on Affidavit—Scope of provision of Section 296(1), Criminal Procedure Code—It speaks of evidence of “formal character”—Evidence contemplated under Section 145(1), Negotiable Instruments Act cannot be termed as evidence of formal character—Provisions of Section 296 Criminal Procedure Code cannot be equated with provisions of Section 145(2) of Negotiable Instruments Act.

IV (2006) BC 302 (Bombay HC)

— **Sections 315, 316**—Negotiable Instruments Act, 1881—Sections 138, 145(1)—Constitution of India, 1950—Article 20(3)—Dishonour of Cheque—Evidence on Affidavit—Right of Accused—Accused cannot be compelled to be witness against himself—Exception contained in Sections 315 and 316 of

Criminal Procedure Code protects rights of accused, who desires to be witness, as envisaged under Constitution—Sections 315 and 316, Criminal Procedure Code clearly demonstrate accused could be competent witness for defence and may give evidence on oath in disproof of charges made against him or any person charged together with him at same trial—He cannot be called as witness except on his own request in writing—Merely because Section 145(1), Negotiable Instruments Act does not expressly permit accused to do so, does not mean, Magistrate cannot allow accused to give his evidence on affidavit by applying same analogy unless there is just and reasonable ground to refuse such permission—There is no express bar on accused to give evidence on affidavit either in Act or in Code—No justified reason to refuse permission to accused to give his evidence on affidavit subject to provisions contained under Sections 315, 316, Criminal Procedure Code.

IV (2006) BC 302 (Bombay HC)

— **Section 461**—Negotiable Instruments Act, 1881—Sections 138, 145(1), 145(2)—Dishonour of Cheque—Evidence on Affidavit—Provisions contained in Section 145 not prospective but operate retrospectively—Code of Criminal Procedure and Evidence Act are general laws and rights created thereunder cannot be termed as substantive rights or vested rights of substantive nature causing any prejudice to accused by Amending Act of 2002 and in particular Section 145, Negotiable Instruments Act—Sub-sections (1) and (2) of Section 145, Negotiable Instruments Act fall within realm of procedural law, they would be applicable to pending cases since there is no vested right in accused in procedural law.

IV (2006) BC 302 (Bombay HC)

— **Section 482**—Negotiable Instruments Act, 1881—Section 138—Dishonour of Cheque—Notice—Careful scrutiny—Cheque amount mentioned in notice and allowance of Rs. 5,000/- given to petitioner on account of payment made by him—At this stage it cannot be held notice is defective—No ground to quash proceedings pending before Judicial Magistrate.

IV (2006) BC 217 (MP HC)

— **Section 482**—Negotiable Instruments Act, 1881—Sections 138, 141—Dishonour of Cheque—Offence by company—Quashing of proceedings—Petitioner involved in affairs of company not disputed—Petitioner-accused assisted respondent No. 4-accused No. 2, her husband to manage affairs of company—Accused No. 2, 100% paralysed below his waist—She was also initial subscriber in business—On basis of averments before M.M., summons rightly issued—No interference called for.

IV (2006) BC 260 (Delhi HC)

— **Section 482**—Negotiable Instruments Act, 1881—Section 138—Dishonour of Cheque—Liability of principal for act of his agent—Position in law is when cheque is issued by agent on behalf of principal, principal cannot escape from his liability on claim made by affected person.

IV (2006) BC 379 (Karnataka HC)

— **Section 482**—Negotiable Instruments Act, 1881—Section 138—Dishonour of Cheque—Discharge of any debt or liability—Burden of proof—It is for petitioner to establish cheques issued by his authorised signatory are not towards discharge of any debt or other liability—This would require detailed examination of correspondence between parties and appreciation of evidence.

IV (2006) BC 379 (Karnataka HC)

— **Section 482**—Inherent Powers—Exercise of—This Court under Section 482, Criminal Procedure Code cannot minutely examine all documents produced by both sides and detailed analysis not required to be done while exercising powers under Section 482 Criminal Procedure Code.

IV (2006) BC 379 (Karnataka HC)

— **Section 482**—Negotiable Instruments Act, 1881—Section 138(b)—Dishonour of Cheque—Notice—To be given in writing—Contention of learned Counsel for accused-applicants that complainant orally informed accused after first dishonour of cheque and complaint is barred by time, not tenable and misconceived—No legal defect in complaint—Summoning order and application under Section 482, Cr.P.C. is devoid of merits and misconceived.

IV (2006) BC 394 (Allahabad HC)

— **Section 482**—Companies Act, 1956—Sections 633(2)—Indian Penal Code, 1860—Sections 406, 420 r/w Section 34—Powers of Court to grant relief in certain cases—Quashing of Complaint—Negligence, default, breach of duty and misfeasance or breach of trust against officer of company—Petitioner seeking relief to relieve him from personal criminal liability with respect to liability of company in liquidation—Matter to be examined in detail to see whether conduct of petitioner was reasonable so as to extend benefit of exemption from criminal liability—Several cases of dishonour of cheques, filed against petitioner who is said to be Executive Director of Company—Magistrate to examine whether petitioner was honest and reasonable in discharging his duties and to know whether it is only mere negligence, misfeasance and breach of duty—Petition seeking quashing of complaint premature.

IV (2006) BC 399 (Karnataka HC)

Debts Recovery Tribunal (Procedure) Rules, 1994

— **Rule 11**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 20(3) and its proviso—Appeal—Limitation—Condonation of delay—Time required for obtaining certified copy of order can be excluded for purpose of limitation—Objection that appeal cannot be entertained unless delay is condoned on an application filed for condonation of delay and time required for obtaining certified copy of order cannot be excluded for purpose of limitation—Certified copy applied for before expiry of 45 days—Period prescribed under Section 20(3) of Act—It is mandatory to file certified copy along with memorandum of appeal, appellants filed appeal along with certified copy immediately after its receipt after prescribed period of 45 days—Appellate Tribunal can entertain appeal under Section 20(3), Proviso, even in absence of application for condonation of delay as there was sufficient cause for not filing appeal within prescribed period of 45 days.

IV (2006) BC 140 (DRAT—Mumbai) (DRAT/DRT)

Delhi Rent Control Act, 1958

— **Section 14(1)**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Section 17(1)—Transfer of Property Act, 1882—Section 65A—Protection of tenant against eviction—Restraint order against bank from taking over physical possession of secured asset, *i.e.* mortgaged property—Power of mortgagor to lease mortgaged property not unfettered but conditioned under Sections 65A(1), 65A(2), 65A(3) of Transfer of Property Act—Unregistered lease created for alleged unlimited period through unregistered lease deed in complete contravention of Section 65A, Transfer of Property Act—Lessee can enjoy protection if lease is created by mortgagor in conformity with mandate of requirements laid down in Section 65A of Transfer of Property Act and not otherwise—Neither mortgagor nor lessee can defeat right of mortgagee and no lessee can claim any protection unless his tenancy is as per requirements of Section 65A of Transfer of Property Act—No interference required in orders passed by DRAT.

IV (2006) BC 299 (Delhi HC) (DB)

Income Tax Act, 1961

— **Rules 73, 74, Second Schedule**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 25(b)—Constitution of India, 1950—Article 21—Arrest and Detention of Defaulter—Recovery of debts amount—Powers of Recovery Officer—Reasons given by Recovery Officer and as confirmed by DRT do not show any of appellants dishonestly transferred or concealed or removed any part of their properties—It is not pointed out that any of appellants had means to pay arrears which ran into crores or substantial part thereof and yet they refused or neglected to pay same—Recovery Officer attributed non-turning up of any bidders to scheduled auctions to appellants without giving reasons—All properties belonging to appellants attached by respondent-Bank—When co-owners' properties attached by respondent-Bank, who are neither debtors nor guarantors, they were within their rights to apply to Recovery Officer and make claim of their joint ownership or share in properties attached by respondent Bank—Appellants cannot be blamed if joint owners lodge their claim in respect of attached properties—Conditions for detention of appellants not fulfilled for invoking remedy under Section 25(b) of RDDBFI Act—Section 25(b) is applicable only when matter goes from DRT to Recovery Officer for recovery of amount on basis of recovery certificate issued by DRT and not during pendency of original application—Appeal decided by DRT casually by confirming order whereby invaluable personal liberty

of citizens guaranteed under Article 21 of Constitution was at stake—Impugned orders set aside.

IV (2006) BC 175 (DRAT—Mumbai) (DRAT/DRT)

Income Tax Rules, 1962

— **Rule 11, Second Schedule (Appendix III)**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 17(A), 19(23), 22 and 29—Civil Procedure Code, 1908—Section 60(ccc)—Transfer of DCP from DRT, Bangalore to DRT, Delhi—Exemption from attachment of property—Appellant sought transfer on ground that he was suffering from paralytic stroke and undergone heart surgery—PO got every right under Section 19(3) to send recovery certificate for execution from one Tribunal to other Tribunal—PO considered all aspects of case and dismissed application of appellant—No ground to interfere with said order and same confirmed—Observations made with regard to attachment of property unnecessary—Recovery Officer empowered to investigate claim and pass orders—Observation made by PO with regard to attachment of appellant's property set aside—Appellant permitted to put forward all his claim before Recovery Officer who shall investigate claim and pass appropriate orders—Matter remanded to Recovery Officer of DRT, Bangalore for fresh disposal—Recovery Officer directed to take independent decision without being influenced by findings of PO.

IV (2006) BC 112 (DRAT—Chennai) (DRAT/DRT)

Indian Partnership Act, 1932

— **Sections 69(1), 69(2), 69(3)**—Arbitration and Conciliation Act, 1996—Section 11(6)—Appointment of Arbitrator—Maintainability of petition—Unregistered partnership firm—Scope of provisions of Sections 69(2) and 69(3) of Partnership Act—Provisions of Section 69(2) extend to “other proceedings” of any kind and not to be construed in light of words “claim of set-off”—Petitioner seeks to enforce arbitration clause by virtue of this proceeding—It is not covered under exceptions provided under Sub-sections (3) and (4) of Section 69, Partnership Act—Provisions of Section 69(2) of Partnership Act would apply to proceedings under Section 11(6) of Act—That being case, bar under Section 69(2) for initiating and/or instituting such proceeding unless firm is registered and persons suing shown in register of firm as partners in firm, would apply—Petitioner No. 1 not Registered Firm, nor petitioner Nos. 2 and 3 shown in Register of Firms as partners of said firm—Bar was absolute as registration of firm is mandatory pre-condition for institution of any suit or proceeding as contemplated under Sections 69(2) and 69(3) of Indian Partnership Act—Mandatory pre-condition not satisfied—Subsequent registration of firm would not cure this fatal defect.

IV (2006) BC 289 (Delhi HC)

Indian Penal Code, 1860

— **Section 44**—Registration Act, 1908—Section 81—Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure—Petitioner-Registering Authority registered deed of cancellation containing stamp less than that of agreement, when it is strictly in accordance with Schedule 1A of Stamp Act—This cannot be ground for prosecuting petitioner—It does not cause any injury to second respondent.

IV (2006) BC 404 (AP HC)

— **Section 44**—Expression—“Injury”—Meaning of.

IV (2006) BC 404 (AP HC)

— **Sections 406, 420 r/w Section 34**—Criminal Procedure Code, 1973—Section 482—Companies Act, 1956—Sections 633(2)—Powers of Court to grant relief in certain cases—Quashing of Complaint—Negligence, default, breach of duty and misfeasance or breach of trust against officer of company—Petitioner seeking relief to relieve him from personal criminal liability with respect to liability of company in liquidation—Matter to be examined in detail to see whether conduct of petitioner was reasonable so as to extend benefit of exemption from criminal liability—Several cases of dishonour of cheques, filed against petitioner who is said to be Executive Director of Company—Magistrate to examine whether petitioner was honest and reasonable in discharging his duties and to know whether it is only mere negligence, misfeasance and breach of duty—Petition seeking quashing of complaint

premature.

IV (2006) BC 399 (Karnataka HC)

— **Section 420**—Negotiable Instruments Act, 1881—Section 138—Dishonour of Cheque—Cheating—Compounding of Offence—Sole appellant convicted by two separate orders passed by Trial Court under Section 138, Negotiable Instruments Act and Section 420, IPC and sentenced to undergo RI of 2 months and 2 years respectively—Both parties filed joint petition for compromise and have compromised disputes in both cases—Compromise is lawful—This Court accorded permission to compromise same—Convictions and sentences awarded against appellant set aside and he is acquitted of charges in both cases.

IV (2006) BC 336 (SC)

— **Sections 420, 406 r/w Section 34**—Negotiable Instruments Act, 1881—Section 138—Criminal Breach of Trust, Common Intention, Dishonour of Cheque—Basic ingredients to offence under Section 138, Negotiable Instruments Act not recited in complaint sent for investigation—No numbers of cheques in question, dates of their presentation in Bank and date of dishonour—No notice would have been served within statutory time for non-payment by concerned petitioner—Prosecution under Section 138 of Act, abuse of process of law—FIR quashed—Insofar as allegation under Sections 420 and 406/34, Cr.P.C. concerned, this Court not persuaded to interfere in matter at this stage.

IV (2006) BC 264 (Patna HC)

Limitation Act, 1963

— **Section 5**—Civil Procedure Code, 1908—Section 96—Condonation of delay in filing appeal—Suit for recovery of amount—Delay of 47 days deserves to be condoned especially when it is remembered that right of one appeal is available in all jurisdictions and first Appellate Court is final Court of facts—Litigant not required to explain everyday's delay because it directly comes in conflict with observations made by Supreme Court in cases of *Land Acquisition Collector, Anantnag* and *Ram Nath Sao, II* (2002) SLT 240, case—Order passed by Lower Appellate Court set aside.

IV (2006) BC 365 (P&H HC)

— **Section 5**—Civil Procedure Code, 1908—Order 8 Rule 1, Order 8 Rule 10—Written Statement—Filing of—Condonation of Delay—Suit for Recovery of Amount—Allegation of serious irregularities and fictitious loans of huge amounts against defendant—Same amount credited in bank accounts for himself and his wife and derived wrongful gains by illegal means—Defendant Nos. 1 and 2 on one hand and defendant Nos. 3 and 4, on other hand filed their written statements beyond period prescribed in law—Application for condonation of delay not filed by defendant Nos. 3 and 4, despite statement of Counsel to move appropriate application—No body appeared on behalf of any of defendants—Plaintiff filed application under Order 8 Rules 1 and 10, CPC for striking off defence of defendants and passing decree in favour of plaintiff—Since there is no application for condonation of delay, written statements filed by defendant Nos. 1 to 4 cannot be taken on record—Suit decreed in favour of plaintiffs for sum of Rs. 44,32,086.01 with *pendente lite* and future interest @ 9% p.a.

IV (2006) BC 337 (Delhi HC)

— **Section 14**—Civil Procedure Code, 1908—Order 21 Rule 89, Order 21 Rule 90—Execution—Setting aside sale—Exclusion of time of proceeding *bona fide* in Court without jurisdiction—Recovery of amount—*Ex parte* decree—Sale of house property in public auction in execution of money decree on 8.12.1998—Sale confirmed about five years later on 10.7.2003—Judgment debtor defendant and his wife filed petition under Order 21 Rule 90 for setting aside sale by judgment debtors before confirmation of sale—Dismissal of appeal permitting judgment debtors to deposit entire decretal amount and on such deposit to move application to set aside sale—Judgment debtors did not comply with said order but deposited entire decretal amount in September 2004 and filed application for setting aside sale—Another application filed stating entire period during which they were *bona fide* prosecuting matter in this Court as well as Court below be excluded as per Section 14 Limitation Act—Fact that they did not comply with order for deposit of entire decretal amount but waited for 1½ years shows entire litigation is lacking *bona fides*—Auction purchaser purchased property and deposited sale proceeds into Court and cannot be deprived of property which he got legally in auction held by Court.

IV (2006) BC 279 (AP HC)

— **Section 14**—Expression—“*Bona fide* and due diligence”—Meaning and significance.

IV (2006) BC 279 (AP HC)

— **Sections 18, 19**—Civil Procedure Code, 1908—Order 37, Rule 1—Recovery of Amount—Extension of limitation period—There has to be either part payment or acknowledgement of liability as contemplated under Sections 18, 19 of Limitation Act—In absence of any such eventuality, limitation period prescribed cannot be extended—Cause of action for recovery of amount arose prior to October, 1976—Suit filed in 1983 clearly barred by law of limitation.

IV (2006) BC 346 (Bombay HC)

Maharashtra Cooperative Society Act, 1960

— Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13(1), 17—Lease—Injunction against borrower from disposing of any of properties secured to Bank until further orders—Borrower prohibited from only selling properties and not from leasing out properties—If there had been any prohibition from leasing out property, appellant would have initiated proceedings for contempt of Court, which was not done.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

— Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13(1), 13(4), 17—Possession of property by Bank leased in favour of third party—In both enactments, *i.e.* Maharashtra Cooperative Society Act and Securitization Act, appellant-Bank had right to take possession not for enjoying property as an owner but to sell property and recover their dues from sale proceeds thereof—Since lease is created in favour of third party, appellants will have to take possession of property subject to rights of lessee—No reason to interfere in impugned order, by which respondent No. 1 asked to pay rent to appellants before physical possession of property delivered to them, which was obtained by appellant-Bank previously.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

Negotiable Instruments Act, 1881

— **Section 20**—Inchoate stamped instrument—Liability to pay amount to respondent Bank by appellant—When person signs and delivers to another paper stamped in accordance with law relating to negotiable instruments then in force in India, either wholly blank or having written incomplete negotiable instrument, he shall be liable upon such instrument in capacity he signed same to any holder in course for such amount—Appellant admits his signature and delivery among other documents—He now cannot turn around and say said instrument cannot be used against him as same is against provisions of Section 20 of Act—Documents duly executed and left by appellant in hands of Company and on strength of those documents, loan given by respondent Bank—Liability of appellant to respondent cannot be denied—If appellant aggrieved at all, his remedy lies elsewhere—No good and valid reasons to interfere with order passed by Debts Recovery Tribunal.

IV (2006) BC 104 (DRAT—Chennai) (DRAT/DRT)

— **Section 138**—Indian Penal Code, 1860—Sections 420, 406 r/w Section 34—Criminal Breach of Trust, Common Intention, Dishonour of Cheque—Basic ingredients to offence under Section 138, Negotiable Instruments Act not recited in complaint sent for investigation—No numbers of cheques in question, dates of their presentation in Bank and date of dishonour—No notice would have been served within statutory time for non-payment by concerned petitioner—Prosecution under Section 138 of Act, abuse of process of law—FIR quashed—Insofar as allegation under Sections 420 and 406/34, Cr.P.C. concerned, this Court not persuaded to interfere in matter at this stage.

IV (2006) BC 264 (Patna HC)

— **Section 138**—Dishonour of Cheque—Modification of Order—Stay of realisation of compensation amount by accepting money (Rs. 50,000/-) already tendered in this Court—Without complying said order petitioner has filed present case for modification of said order after depositing Rs. 50,000/- in this Court out of total sum of Rs. 4,50,000/—Petitioner admittedly issued cheque of Rs. 4,50,000/- in favour

of O.P. No. 2 because he took amount from him and cheque dishonoured by Bank due to non-availability of sufficient funds in petitioner's account—Case under Section 138, N.I. Act properly made out and proved against petitioner—This Court not inclined to entertain application for modification of order dated 15.9.2005 since criminal revision merits no consideration and interim order sought to be modified was passed after hearing both parties—Order dated 15.9.2005 not intentionally complied with by petitioner as appears from his conduct—Interim orders vacated.

IV (2006) BC 229 (Orissa HC)

— **Section 138**—Criminal Procedure Code, 1973—Section 482—Dishonour of Cheque—Notice—Careful scrutiny—Cheque amount mentioned in notice and allowance of Rs. 5,000/- given to petitioner on account of payment made by him—At this stage it cannot be held notice is defective—No ground to quash proceedings pending before Judicial Magistrate.

IV (2006) BC 217 (MP HC)

— **Section 138**—Dishonour of Cheque—Acquittal by Trial Court—High Court on reappreciation of evidence came to different conclusion on entirely new grounds without considering material considered by Trial Court and convicted appellant—High Court as an Appellate Court obliged to come to definite conclusion that findings of Trial Court are either perverse or contrary to material on record—Non-examination of Advocate and C.P. to whom appellant alleged to have given blank cheque in regard to Chit transaction, fatal to case of complainant/respondent—It was necessary piece of evidence to establish fact that respondent advanced sum of Rs. 26,500/- to appellant—Trial Court further found ink used in body of cheque was different from ink used in signature of cheque and case put forth by respondent doubtful and could not be accepted—Trial Court justified that because of said deficiencies respondent's complaint ought to fail—High Court erroneously reversed finding of acquittal recorded by Trial Court.

IV (2006) BC 295 (SC)

— **Section 138**—Dishonour of Cheque—Notice—Complaint could not be dismissed for mixing up number and date of cheque as mentioned in notice and complaint.

IV (2006) BC 265 (Bombay HC)

— **Section 138**—Dishonour of Cheque—Cheque returned because of basic structural defect and not because account was closed or insufficient funds in account—Such endorsement *i.e.* "account could not be located" will not amount to saying account was closed—Complainant failed to make out *prima facie* case under Section 138 of Act.

IV (2006) BC 265 (Bombay HC)

— **Section 138**—Indian Penal Code, 1860—Section 420—Dishonour of Cheque—Cheating—Compounding of Offence—Sole appellant convicted by two separate orders passed by Trial Court under Section 138, Negotiable Instruments Act and Section 420, IPC and sentenced to undergo RI of 2 months and 2 years respectively—Both parties filed joint petition for compromise and have compromised disputes in both cases—Compromise is lawful—This Court accorded permission to compromise same—Convictions and sentences awarded against appellant set aside and he is acquitted of charges in both cases.

IV (2006) BC 336 (SC)

— **Section 138**—Dishonour of Cheque—Practice and procedure followed in M.M. Courts in Mumbai—In large number of cases, accused, after service of summons, file either revision or writ application/application under Articles 226/227 of Constitution or Section 482 Criminal Procedure Code for quashing of process—Complainant, if complaint is against company, arraign all directors as accused in complaint as result of which revision or writ petition filed by accused becomes inevitable and proceedings get delayed due to interim orders passed in revision or writ petitions—Service of summons on accused taken years and further delay in disposal of cases—In order to accomplish underline object of Act, guidelines/directions issued by this Court.

IV (2006) BC 302 (Bombay HC)

— **Section 138**—Dishonour of Cheque—Notice demanding payment of cheque amount—Validity—

Subsequent notice—Entire tenor of two notices different—Notices in these cases do not intend to be notice under Section 138 of Act—Language of these notices also do not make notice under Section 138 of Act by default—Complainant not bound by notices—His case based on subsequent presentation of cheques before Bank and subsequent notice of demand not invalid.

IV (2006) BC 283 (Delhi HC)

— **Section 138**—Dishonour of Cheque—Notice received by petitioner within fifteen days from date when cheques were dishonoured—Respondent stated in his objections that petitioner not only received lawyer's notice but also gave his reply through his lawyer—Acknowledgement of postal department are clear proof of notice having been served upon petitioner before complaints in question lodged.

IV (2006) BC 379 (Karnataka HC)

— **Section 138**—Criminal Procedure Code, 1973—Section 482—Dishonour of Cheque—Liability of principal for act of his agent—Position in law is when cheque is issued by agent on behalf of principal, principal cannot escape from his liability on claim made by affected person.

IV (2006) BC 379 (Karnataka HC)

— **Section 138**—Criminal Procedure Code, 1973—Section 482—Dishonour of Cheque—Discharge of any debt or liability—Burden of proof—It is for petitioner to establish cheques issued by his authorised signatory are not towards discharge of any debt or other liability—This would require detailed examination of correspondence between parties and appreciation of evidence.

IV (2006) BC 379 (Karnataka HC)

— **Sections 138, 118, 139**—Dishonour of Cheque—Cheque issued for debt or liability—Presumption rebuttable—Burden of proof on accused—Burden not discharged by accused—respondent No. 1—High Court erroneously set aside conviction—Impugned judgment set aside.

IV (2006) BC 287 (SC)

— **Sections 138, 139**—Dishonour of Cheque—Presumption—Cheques issued as security for repayment of loan and blank cheque issued—Cheque whether issued for repayment of loan or as security makes little difference under Section 138 of Act—Legal consequences are same without distinction in event of dishonour—Issue of cheque, its dishonour and issuance of statutory notice proved, presumption under Section 139 of Act would arise with regard to consideration—Accused let in no evidence to rebut said presumption—Dismissal of complaint bad in law—Complainant successfully proved guilt and accused liable to be convicted under Section 138 of Act—Accused sentenced to pay fine of Rs. 1,50,000/-, in default simple imprisonment for 6 months.

IV (2006) BC 209 (Karnataka HC)

— **Sections 138, 141**—Criminal Procedure Code, 1973—Section 482—Dishonour of Cheque—Offence by company—Quashing of proceedings—Petitioner involved in affairs of company not disputed—Petitioner—accused assisted respondent No. 4—accused No. 2, her husband to manage affairs of company—Accused No. 2, 100% paralysed below his waist—She was also initial subscriber in business—On basis of averments before M.M., summons rightly issued—No interference called for.

IV (2006) BC 260 (Delhi HC)

— **Sections 138, 141(2)**—Dishonour of Cheque—Offence by company—Cheque in question signed by officer of company—Whether he was M.D. or Director in charge of day-to-day affairs of company would be additional point in favour of petitioner—Mere fact that he was officer of company and signatory of cheque would bring him within ambit of Section 141(2) of Act.

IV (2006) BC 391 (Delhi HC)

— **Sections 138, 145(1)**—Constitution of India, 1950—Article 20(3)—Criminal Procedure Code, 1973—Sections 315, 316—Dishonour of Cheque—Evidence on Affidavit—Right of Accused—Accused cannot be compelled to be witness against himself—Exception contained in Sections 315 and 316 of Criminal Procedure Code protects rights of accused, who desires to be witness, as envisaged under Constitution—Sections 315 and 316, Criminal Procedure Code clearly demonstrate accused could be competent witness for defence and may give evidence on oath in disproof of charges made against him

or any person charged together with him at same trial—He cannot be called as witness except on his own request in writing—Merely because Section 145(1), Negotiable Instruments Act does not expressly permit accused to do so, does not mean, Magistrate cannot allow accused to give his evidence on affidavit by applying same analogy unless there is just and reasonable ground to refuse such permission—There is no express bar on accused to give evidence on affidavit either in Act or in Code—No justified reason to refuse permission to accused to give his evidence on affidavit subject to provisions contained under Sections 315, 316, Criminal Procedure Code.

IV (2006) BC 302 (Bombay HC)

— **Sections 138, 145(1), 145(2)**—[As amended by Negotiable Instrument (Amendment and Misc. Provisions) Act, 2002]—Dishonour of Cheque—Evidence on Affidavit—Right of complainant and accused under Sections 145(1) and 145(2), Negotiable Instruments Act—Section 145(1), Negotiable Instruments Act, gives complete freedom and option to complainant to give his evidence on affidavit making it further clear that such evidence shall be read in any inquiry, trial and other proceedings subject to all just exceptions—Sub-sections (1) and (2) of Section 145 create two distinct and separate rights, former in favour of complainant and latter for benefit of both, complainant and accused, besides right of Court to summon and examine any person giving evidence on affidavit—Right of accused under Section 145(2) is only to cross-examine person giving evidence on affidavit in respect of facts contained therein—It does not confer right on accused to seek direction to any person, giving evidence on affidavit, to step into witness box and give oral examination-in-chief in respect of matters stated on affidavit—Sub-section (2) cannot be interpreted as to render Sub-section (1) of Section 145 redundant—Right of prosecution to “examine” witness provided for in Section 145(2), means right of “examination-in-chief” and “re-examination” of person who has given his evidence on affidavit and has been cross-examined.

IV (2006) BC 302 (Bombay HC)

— **Sections 138, 145(1), 145(2)**—Criminal Procedure Code, 1973—Section 461—Dishonour of Cheque—Evidence on Affidavit—Provisions contained in Section 145 not prospective but operate retrospectively—Code of Criminal Procedure and Evidence Act are general laws and rights created thereunder cannot be termed as substantive rights or vested rights of substantive nature causing any prejudice to accused by Amending Act of 2002 and in particular Section 145, Negotiable Instruments Act—Sub-sections (1) and (2) of Section 145, Negotiable Instruments Act fall within realm of procedural law, they would be applicable to pending cases since there is no vested right in accused in procedural law.

IV (2006) BC 302 (Bombay HC)

— **Sections 138, 145(1), 145(2)**—Dishonour of Cheque—Evidence on Affidavit— Objection as to document being tendered in evidence to be taken at appropriate time to enable party to cure defect and resort to such mode of proof as would be regular—Objection as to document being irregular or insufficient cannot be allowed to be raised at any stage subsequent to making of document as an exhibit—If party tendering document/s with affidavit does not opt to lead further evidence to cure defect, it should be left to Court either to decide objection then and there or as indicated by Supreme Court in *Bipin Panchal's* case, mark such document for identification and decide it in final judgment.

IV (2006) BC 302 (Bombay HC)

— **Sections 138, 145(2)**—Criminal Procedure Code, 1973—Section 296—Dishonour of Cheque—Evidence on Affidavit—Scope of provision of Section 296(1), Criminal Procedure Code—It speaks of evidence of “formal character”—Evidence contemplated under Section 145(1), Negotiable Instruments Act cannot be termed as evidence of formal character—Provisions of Section 296 Criminal Procedure Code cannot be equated with provisions of Section 145(2) of Negotiable Instruments Act.

IV (2006) BC 302 (Bombay HC)

— **Sections 138, 147**—Dishonour of Cheque—Compounding of Offence—Accused-appellants surrendered and offence compounded by paying entire dues to complainant—Joint application seeking permission to compound offence filed—Section 147, Negotiable Instruments Act, as amended, makes offence compoundable—No ground to reject prayer for compounding offence—Sentence of imprisonment set aside and sentence of fine maintained.

IV (2006) BC 345 (SC)

— **Section 138(b)**—Criminal Procedure Code, 1973—Section 482—Dishonour of Cheque—Notice—To be given in writing—Contention of learned Counsel for accused-applicants that complainant orally informed accused after first dishonour of cheque and complaint is barred by time, not tenable and misconceived—No legal defect in complaint—Summoning order and application under Section 482, Cr.P.C. is devoid of merits and misconceived.

IV (2006) BC 394 (Allahabad HC)

— **Section 145(2)**—Expression—“Examine”—Meaning of word under Section 145(2) of Act—It would mean and include “examination-in-chief”, “cross-examination”, “re-examination” and “examination by Judge”.

IV (2006) BC 302 (Bombay HC)

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

— Interest—Award of—Discretion of Tribunal to award interest for *pendente lite* period and post-order period—Taking into consideration all elements involved in granting interest and several schemes floated by several Banks, Tribunal inclined to grant interest @ 9.5% simple for *pendente lite* period and post-order period/decreed period—Interest accordingly enhanced from 6% to 9.5%.

IV (2006) BC 89 (DRAT—Chennai) (DRAT/DRT)

— Jurisdiction of Tribunal—Transfer of O.A. to Tribunal—Justification—Applicant by notification is declared Financial Institution within meaning of RDDBFI Act—Claim constitutes ‘debt’ and is in excess of Rs. 10 lacs—Tribunal alone has jurisdiction.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

— Recovery of amount along with costs, *pendente lite* and future interest—Sanction of cash credit facility and CANMOBILE Loan—Despite repeated requests and reminders and legal notice, defendants did not regularise accounts and accounts classified as N.P.A.—Bank filed 3 affidavits in evidence and oral and documentary evidence to prove its claim—No document filed in rebuttal by any of defendants—Guarantee deed executed by defendant Nos. 4, 5 and 7 for sum of Rs. 10 lacs makes their liabilities co-extensive with that of principal borrower—Creation of equitable mortgage of properties of defendant Nos. 3 and 7 and memorandum of deposit of title deeds and its extension only proved—No reason to disbelieve oral and documentary evidence of Bank—Claim of applicant-Bank duly proved against all defendants 1 to 7 jointly and severally—Liability of defendant No. 5 limited to extent of Rs. 10 lacs—Suit decreed for sum of Rs. 19,55,960.78 along with costs, *pendente lite* and future interest @ 17.75% p.a @ 16% p.a. on CANMOBILE loan account.

IV (2006) BC 114 (DRT—Delhi) (DRAT/DRT)

— Recovery of Amount—Bank based its entire claim on 3 accounts—DRT rejected claim of petitioner-Bank mainly on ground that statements of accounts filed by petitioner-Bank not genuine and tainted with concealment of facts and arbitrary charging of higher rate of interest—DRT allowed claim of respondent No. 1 on ground that petitioner Bank charged higher rate of interest from June 1993 till 20.3.1999, without serving any notice of RBI circular charging rates of interest—Writ petitioner Bank furnished its statements of accounts in DRT—It became duty of DRT to examine correctness and genuineness of revised claim made by petitioner Bank—DRT justified in allowing respondents to file their affidavit and contest correctness and genuineness of revised statement of account—Respondents claim to be maintaining as many as 8 accounts with petitioner Bank and transactions taken place in those accounts required to be taken together for determining actual liabilities, if any, of party concerned—Impossible on part of DRT to examine correctness and/or genuineness of revised claim which petitioner made—Petitioner Bank already held liable to pay to respondents sum of Rs. 42,50,395/- Correctness of this amount remained unshaken—Petitioner Bank not disputed correctness of said finding of DRT—Neither DRT nor Appellate Tribunal acted illegally or unjustifiably in not allowing claim of petitioner Bank and in maintaining Bank’s liability to pay sum of Rs. 42,50,395/-.

IV (2006) BC 384 (Gauhati HC)

— **Section 2(g)**—“Debt”—Jurisdiction of DRT—Respondent claimed certain amount as ‘debt’ due to

them from defendant Nos. 1 to 11, DRT has jurisdiction to entertain claim under provisions of RDDBFI Act—Respondents were not interested in subscribing and purchasing shares of defendant No. 12 Company except for purpose of giving loan to defendant No. 12 on security of shares and additional security of undertaking from promoters of company who are defendant Nos. 1 to 11—There was also pledge of shares of defendant No. 12 company held by defendant Nos. 1 to 11—Respondents are financial institution and provisions of RDDBFI Act applicable for recovery of its debts—Buy back transactions entered into by banking companies are prohibited by notification dated 27.6.1969—This point can be raised by defendants before DRT in original application—Claim may fail if any illegality pointed out in that respect but that is not ground to oust jurisdiction of DRT at threshold to entertain application—No reason to interfere with impugned order passed by DRT.

IV (2006) BC 165 (DRAT—Mumbai) (DRAT/DRT)

— **Section 2(g)**—“Debt”—Ingredients—Though guarantee appears to have been for repurchase of company shares, what was essentially granted to company was financial assistance by subscribing to shares, mechanism employed for securing recovery—It is nobody’s case applicant actually wanted to purchase shares—Letter of indemnity/guarantee shows it was executed for securing applicant’s monies—Claim is clearly debt.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

— **Section 2(g)**—Transfer of Property Act, 1882—“Debt”—Expression not defined in Transfer of Property Act—Question whether meaning of word debt in RDDBFI Act will be same as in Transfer of Property Act does not arise and cannot be considered.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

— **Section 2(g)**—Transfer of Property Act, 1882—“Debt”—Covers all actionable claim but not *vice versa*—Every debt is actionable claim but every actionable claim is not debt—Word debt not defined in Transfer of Property Act as appearing in definition of actionable claim and meaning to be derived from definition under Section 2(g) of RDDBFI Act—Word to be given meaning in its widest amplitude.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

— **Section 2(g)**—“Debt”—Liability as claimed by Bank should be during course of business activity undertaken by Bank—Applicant Bank’s claim made during course of its business activity—Claim is debt within meaning of RDDBFI Act.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

— **Section 2(g)**—“Debt” and “Security”—Deed of assignment states assignee shall have all rights and obligations under financial instruments as if they were executed by defendant No. 1 in favour of assignee—Deed also has list of financial instruments including all securities—Idle to contend assignment was of merely of debt.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

— **Sections 17, 18, 19(1)**—Constitution of India, 1950—Article 226—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13(2), 37—Realisation of Secured Debt—Remedy available to Bank—Bank is given ample right not only under provisions of these two Acts, but also under provisions of various other enactments—Petitioner Bank did not avail any of these remedies—It cannot be permitted to enforce its right under Article 226 of Constitution when it has of its own volition not availed any of remedies available under RDDBFI Act and other enactments.

IV (2006) BC 371 (AP HC)

— **Sections 17, 18, 19(1)**—Constitution of India, 1950—Articles 226, 227—Writ jurisdiction—Provisions of Sections 17 and 18 of RDDBFI Act does not bar jurisdiction of High Court under Article 226 of Constitution subject to other principles of law—Petitioner Bank straightaway approached High Court and did not approach DRT—Writ petition cannot be entertained even as per Section 18 of RDDBFI Act.

IV (2006) BC 371 (AP HC)

— **Sections 17(A), 19(23), 22 and 29**—Civil Procedure Code, 1908—Section 60(ccc)—Income Tax Rules, 1962—Rule 11, Second Schedule (Appendix III)—Transfer of DCP from DRT, Bangalore to DRT, Delhi—Exemption from attachment of property—Appellant sought transfer on ground that he was suffering from paralytic stroke and undergone heart surgery—PO got every right under Section 19(3) to send recovery certificate for execution from one Tribunal to other Tribunal—PO considered all aspects of case and dismissed application of appellant—No ground to interfere with said order and same confirmed—Observations made with regard to attachment of property unnecessary—Recovery Officer empowered to investigate claim and pass orders—Observation made by PO with regard to attachment of appellant's property set aside—Appellant permitted to put forward all his claim before Recovery Officer who shall investigate claim and pass appropriate orders—Matter remanded to Recovery Officer of DRT, Bangalore for fresh disposal—Recovery Officer directed to take independent decision without being influenced by findings of PO.

IV (2006) BC 112 (DRAT—Chennai) (DRAT/DRT)

— **Sections 19, 21 and its proviso**—Constitution of India, 1950—Article 226—Waiver of deposit of amount—Appeal—Maintainability—Minimum of 75% of tax to be deposited before appeal could be entertained—Validity of Section 21 of Act upheld—Nothing had been placed by petitioners to show it could not comply with conditions of Section 21—This is finding of fact and cannot be interfered with in exercise of writ jurisdiction.

IV (2006) BC 245 (Delhi HC) (DB)

— **Section 19(19)** r/w Section 529A of Companies Act—Companies Act, 1956—Sections 442, 537—Jurisdiction of DRT—Leave of Company Court not necessary for initiating proceedings under Recovery of Debts Due to Banks and Financial Institutions Act—Claim of various creditors can be decided only by DRT in accordance with Section 19(19) of Recovery of Debts Due to Banks and Financial Institutions Act r/w Section 529A of Companies Act and in no other manner—Observation of DRT that appellants have to file their claim before official liquidator incorrect and same set aside—Official liquidator to forward claim of priorities as contemplated under Sections 529 and 529A of Companies Act to Recovery Officer—Same shall be taken into account by Recovery Officer in distributing sale proceeds.

IV (2006) BC 89 (DRAT—Chennai) (DRAT/DRT)

— **Section 19(20)**—Interest—Award of—Discretion of Tribunal and Tribunal need not necessarily grant interest as claimed by Bank in plaint or in O.A.—Appellant not specifically prayed for grant of interest at quarterly rests in prayer column of plaint—Interest ordered by Tribunal in review application filed by respondent *i.e.* @ 16.5% p.a. simple, reasonable and meet ends of justice—It does not suffer from any infirmity to be interfered by Tribunal—As respondents have come forward to pay entire amount as ordered in review application, they are directed to pay entire decree amount together with interest @ 10.5% p.a. simple from date of decree till date of due payment.

IV (2006) BC 97 (DRAT—Chennai) (DRAT/DRT)

— **Section 20(3) and its proviso**—Debts Recovery Tribunal (Procedure) Rules, 1994—Rule 11—Appeal—Limitation—Condonation of delay—Time required for obtaining certified copy of order can be excluded for purpose of limitation—Objection that appeal cannot be entertained unless delay is condoned on an application filed for condonation of delay and time required for obtaining certified copy of order cannot be excluded for purpose of limitation—Certified copy applied for before expiry of 45 days—Period prescribed under Section 20(3) of Act—It is mandatory to file certified copy along with memorandum of appeal, appellants filed appeal along with certified copy immediately after its receipt after prescribed period of 45 days—Appellate Tribunal can entertain appeal under Section 20(3), Proviso, even in absence of application for condonation of delay as there was sufficient cause for not filing appeal within prescribed period of 45 days.

IV (2006) BC 140 (DRAT—Mumbai) (DRAT/DRT)

— **Section 21**—Appropriation of amount of deposit along with accrued interest towards 'debt' due from appellants to Bank—Rate of interest—From Statement of Account produced by Bank it appears Bank has adjusted amount of Rs. 7,67,821/- towards interest—Learned Counsel for appellants states

appellants ought to have been given interest @ 18% on said amount from date of FDR as if appellants had given loan to respondent-Bank—Said argument does not stand—Said amount cannot by any fiction be deemed to have been given as loan to respondent-Bank by appellants which would fetch interest @ 18% p.a.

IV (2006) BC 144 (DRAT—Mumbai) (DRAT/DRT)

— **Section 21**—Contract Act, 1872—Sections 59, 60, 61—Appropriation of Payments—Scope of provisions of Sections 59, 60 and 61 of Contract Act—Amount deposited under Section 21 of RDDBFI Act, which is not payment by debtor to creditor as contemplated by Sections 59, 60 and 61 of Contract Act—This amount was deposited in FDR in name of Registrar, DRAT—Provisions of Sections 59 to 61, Contract Act applicable when payments made by debtor by his own act and not when amount is deposited under statutory provision like Section 21 of RDDBFI Act—In absence of any provision equitable principle should not be lost sight of—Respondent-Bank directed to give credit of amount deposited by appellants in account of appellants from date of FDR though amount deposited in name of Registrar, DRAT—If amount invested in other than creditor Bank, equity would not have been in favour of appellants.

IV (2006) BC 144 (DRAT—Mumbai) (DRAT/DRT)

— **Section 21**—Contract Act, 1872—Section 61—Adjustment/appropriation of amount deposited by judgment debtor under Section 21 of RDDBFI Act—Provisions of Section 61, Contract Act not applicable—Respondent-Bank in fairness also agreed to give credit of sum of Rs. 80,237/- which is amount of interest accrued on fixed deposit amount of Rs. 7,67,821/- —After making all adjustments respondent Bank given figure of Rs. 18,45,329/- as amount due and payable by appellants to respondent-Bank—Respondent-Bank directed to give credit of sum of Rs. 7,67,821/- in account of appellants from date of FDR and permitted to encash said amount of FDR in account of appellants from date of FDR—It is agreed between parties that cheque in sum of Rs. 18,45,329/as amount due going to be tendered by appellants as full and final settlement of claim of respondent-Bank.

IV (2006) BC 144 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 22(2)(e), 22(2)(h)** r/w Rule 5A of DRT (Procedure) Rules—Recall of Order Passed by Tribunal—During pendency of proceedings compromise effected between Bank and appellants—PO, DRT, dismissed case of respondent-Bank taking cognizance of compromise itself and order passed to effect that Bank should return original documents in its possession to defendant-appellants as early as possible—Said order of dismissal of case of Bank challenged before Appellate Tribunal and same also dismissed by Appellate Tribunal—Non-compliance of all formalities as required under Section 22(2)(e) of Act r/w Rule 7 of Rules—Original lading bills not in possession of Bank—Payment of bills made directly by foreign agency to appellate firm and same not controverted—Existence of original bills/documents cannot be logically in possession of respondent-Bank—Appellant failed to produce any correspondence made by them with foreign Bank to effect that bills were lying with Canara Bank—After hearing appellants and documents being returned and received, order passed by Tribunal—No scope to reopen matter again and again.

IV (2006) BC 82 (DRAT—Allahabad) (DRAT/DRT)

— **Section 22(2)(g)**—Code of Civil Procedure, 1908—Order 9 Rule 13, proviso—Setting aside *ex parte* judgment—Rejection of restoration petition—Non-service of notice—Suit for recovery of amount—Civil Judge transferred case to Tribunal in presence of appellant and Bank—There was no scope for Tribunal to give further notice to appellant—In view of consistency and chronology, no fault on part of Tribunal in not informing appellant about pendency of case—Appellant after getting copy of judgment slept over matter for more than one year—Restoration petition filed making concocted and manufactured story of negligence of lawyers not supported by affidavit from lawyers—Appellant not able to make out any case of restoration of original application—Non-liability of appellant is matter on merit of case—*Ex parte* judgment cannot be set aside.

IV (2006) BC 121 (DRAT—Allahabad) (DRAT/DRT)

— **Section 25(b)**—Income Tax Act, 1961—Rules 73, 74, Second Schedule—Constitution of India, 1950—Article 21—Arrest and Detention of Defaulter—Recovery of debts amount—Powers of Recovery

Officer—Reasons given by Recovery Officer and as confirmed by DRT do not show any of appellants dishonestly transferred or concealed or removed any part of their properties—It is not pointed out that any of appellants had means to pay arrears which ran into crores or substantial part thereof and yet they refused or neglected to pay same—Recovery Officer attributed non-turning up of any bidders to scheduled auctions to appellants without giving reasons—All properties belonging to appellants attached by respondent-Bank—When co-owners' properties attached by respondent-Bank, who are neither debtors nor guarantors, they were within their rights to apply to Recovery Officer and make claim of their joint ownership or share in properties attached by respondent Bank—Appellants cannot be blamed if joint owners lodge their claim in respect of attached properties—Conditions for detention of appellants not fulfilled for invoking remedy under Section 25(b) of RDDBFI Act—Section 25(b) is applicable only when matter goes from DRT to Recovery Officer for recovery of amount on basis of recovery certificate issued by DRT and not during pendency of original application—Appeal decided by DRT casually by confirming order whereby invaluable personal liberty of citizens guaranteed under Article 21 of Constitution was at stake—Impugned orders set aside.

IV (2006) BC 175 (DRAT—Mumbai) (DRAT/DRT)

— **Section 34(2)**—State Financial Corporations Act, 1951—Section 29—Provisions of SFC Act and RDDBFI Act mutually exclusive—Section 34(2) of RDDBFI Act states provisions of SFC Act are in addition and not in derogation of former Act—Remedies under SFC Act not abrogated while resorting to remedy under SFC Act or *vice versa*.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

Registration Act, 1908

— **Section 81**—Indian Penal Code, 1860—Section 44—Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure—Petitioner-Registering Authority registered deed of cancellation containing stamp less than that of agreement, when it is strictly in accordance with Schedule 1A of Stamp Act—This cannot be ground for prosecuting petitioner—It does not cause any injury to second respondent.

IV (2006) BC 404 (AP HC)

Revenue Recovery Act, 1968 (Kerala)

— **Section 71**—Credits availed under Credit Cards by card holder does not represent loan under development scheme—Recovery of decreed amount not permissible under R.R. Act as notification issued under Section 71 of Act does not authorise recovery of such loan—Revenue recovery proceedings quashed initiated for recovery of amount decreed by Civil Court in respect of advances permitted to petitioner under Credit Card Account—Bank is free to proceed for recovery of balance amount including interest if any through execution proceedings.

IV (2006) BC 369 (Kerala HC)

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

— One Time Settlement—Respondent application for release of property and stay of proceedings allowed by Tribunal—Reliance placed on representation of respondent that OTS accepted—One Time Settlement brought about by threat and coercion and also rejected by Bank—Observation of Tribunal that there was OTS is patent error and liable to be set aside—Directions given by DRT to appellant to release property set aside—With regard to stay granted by DRT in respect of further proceedings of sale of property mentioned in S.A., appellant Bank entitled to proceed with proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act—Notice issued prior to date on which act amended—That fact not taken into account by Debts Recovery Tribunal in granting stay—Order of stay granted by Debts Recovery Tribunal also set aside.

IV (2006) BC 125 (DRAT—Chennai) (DRAT/DRT)

— **Sections 13(1), 13(4), 17**—Maharashtra Cooperative Society Act, 1960—Possession of property by Bank leased in favour of third party—In both enactments, *i.e.* Maharashtra Cooperative Society Act and Securitization Act, appellant-Bank had right to take possession not for enjoying property as an owner

but to sell property and recover their dues from sale proceeds thereof—Since lease is created in favour of third party, appellants will have to take possession of property subject to rights of lessee—No reason to interfere in impugned order, by which respondent No. 1 asked to pay rent to appellants before physical possession of property delivered to them, which was obtained by appellant-Bank previously.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 13(1), 17**—Transfer of Property Act, 1882—Sections 65A(1), 65A(3)—Lease—Validity—Jurisdiction of DRT to decide—When important legal right of party sought to be taken away, *i.e.* right of mortgagor to give mortgaged property on lease, contrary intention to be unequivocally expressed in mortgage deed—In absence of such express condition or intention to contrary as envisaged under Section 65A(3), right vested under Section 65A(1) cannot be taken away—If mortgagor himself cannot evict lessee without following due process of law, appellant-Bank, which only steps into shoes of mortgagor, cannot evict respondent No. 1 Corporation without initiating eviction proceedings under provisions of Transfer of Property Act or Rent Control Act.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 13(1), 17**—Maharashtra Cooperative Society Act, 1960—Lease—Injunction against borrower from disposing of any of properties secured to Bank until further orders—Borrower prohibited from only selling properties and not from leasing out properties—If there had been any prohibition from leasing out property, appellant would have initiated proceedings for contempt of Court, which was not done.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

— **Section 13(2)**—Auction—Quashing of—Contention that in auction notice, machinery, which is not subject matter of hypothecation, published for sale—Plea to be raised before appropriate forum—Tribunal gave offer to petitioners to deposit some amount, to show *bona fide*, for stay of auction—Same offer repeated by this Court—Amount not deposited—Clear attempt to delay proceedings.

IV (2006) BC 393 (P&H HC) (DB)

— **Section 13(2)**—Suit for recovery of amount along with interest—Liability of guarantors and mortgagors—Sanction of Cash Credit facility on Guarantee by Defendant Nos. 2 and 3—Directors and equitable mortgage of property—Defendant Nos. 3 and 4 are mortgagors—Defendant No. 1 is borrower company—2nd defendant admitted execution of letter of guarantee and it is not continuing guarantee—Cheques on record show defendant No. 2 signed till last which destroys defendant's contention that guarantee was for restricted period—O.A. against defendant No. 2 liable to be allowed—Almost all cheques filed on record co-signed by defendant No. 3—By giving signatures on blank cheques she is deemed to have authorised defendant No. 2 to fill in cheques—She cannot avoid liability befalling on her—Defendant No. 4 sued merely as mortgagor—No possibility of defendant No. 4 having himself deposited title deed—Sanction letter required creation of equitable mortgage by defendant No. 3 and not by defendant No. 4—O.A. as against defendant No. 4 liable to be dis-allowed—Applicant also not entitled to costs and entitled to interest @ 6% p.a.

IV (2006) BC 170 (DRT—Mumbai) (DRAT/DRT)

— **Sections 13(2), 13(4), 17**—Constitution of India, 1950—Articles 226, 12—Writ Petition—Maintainability—Default in repayment of loan amount—Notice under Section 13(2) of Act to enforce security—Non-payment of amount—Initiation of action under Section 13(4) of Act by 1st respondent and issue of auction notice—Petitioner filed writ petition seeking writ of *certiorari* to quash notice under Section 13(2) of Act issued by 1st respondent—Respondent-Bank no doubt obtained licence from RBI but it cannot be treated as “State” for purpose of Article 12 of Constitution—*Mandamus* cannot be issued to it as same does not perform any public duty—Petitioner at liberty to file appeal under Section 17 of Act before competent authority—Writ petition not maintainable and misconceived.

IV (2006) BC 222 (AP HC)

— **Sections 13(2), 13(4), 17, 36**—Quashing of possession notice, stay auction and sale of property—Claim of Bank not barred by limitation—Respondent-Bank initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, within limitation by issuing notice under Section 13(2) of Act—Section 36 of Act as well as various provisions provide

secured creditors can enforce its rights against security for legally valid claim—Claim should be within limitation at time of issuance of notice under Section 13(2) of Act and not at time of issuance of notice under Section 13(4) of Act—Two simultaneous proceedings can be initiated by respondent Bank for one claim—Action taken by Bank under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act legally valid.

IV (2006) BC 94 (DRT—Lucknow) (DRAT/DRT)

— **Sections 13(2), 31, 31(g), 31(i)**—Civil Procedure Code, 1908—Sections 60(1) proviso, 60(1)(c), 60(1) Explanation V—Attachment or Sale of Property—Notice under Section 13(2), SRFAESI Act—Exemption from attachment—To attract scope of Section 60(1)(c), CPC, petitioner must be in possession of house for agricultural purpose—His main source of income is agriculture—No evidence to show petitioner is agriculturist or any connection between such agricultural operations and secured house property—Petitioner not entitled to immunity under Section 60(1)(c), CPC—Writ petition filed only to delay proceedings—Even though civil proceeding is pending, Bank could call in aid provisions of SRFAESI Act—Option is given to Bank to move Civil Court or Tribunal under Act—No bar in invoking provisions of SRFAESI Act, after having approached Civil Court—Petitioner not proved house property is residential portion—Materials available clearly show premises are being let out to tenants and petitioner knowingly made false statement before Court—Petitioner not entitled to relief sought for.

IV (2006) BC 211 (Madras HC)

— **Sections 13(2), 37**—Constitution of India, 1950—Article 226—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 17, 18, 19(1)—Realisation of Secured Debt—Remedy available to Bank—Bank is given ample right not only under provisions of these two Acts, but also under provisions of various other enactments—Petitioner Bank did not avail any of these remedies—It cannot be permitted to enforce its right under Article 226 of Constitution when it has of its own volition not availed any of remedies available under RDBFI Act and other enactments.

IV (2006) BC 371 (AP HC)

— **Sections 13(4), 17**—Application—Limitation—Person aggrieved by any of measures taken under Section 13(4) of Act to make application within period of 45 days from date of measures—Respondent No. 1 not really aggrieved after symbolic possession taken by Bank because in that event, property could have been sold by Bank only subject to right of lessee—It cannot be said application under Section 17 of Act ought to have been filed against taking of symbolic possession on 5.11.2004—Respondent can be said to be aggrieved from measure taken by appellant Bank under Section 13(4), when physical possession of premises in occupation of respondent No. 1 Corporation taken—As physical possession taken by appellant on 5.2.2005, application made on 22.3.2005 under Section 17 of Act was within limitation.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

— **Section 17(1)**—Delhi Rent Control Act, 1958—Section 14(1)—Transfer of Property Act, 1882—Section 65A—Protection of tenant against eviction—Restraint order against bank from taking over physical possession of secured asset, *i.e.* mortgaged property—Power of mortgagor to lease mortgaged property not unfettered but conditioned under Sections 65A(1), 65A(2), 65A(3) of Transfer of Property Act—Unregistered lease created for alleged unlimited period through unregistered lease deed in complete contravention of Section 65A, Transfer of Property Act—Lessee can enjoy protection if lease is created by mortgagor in conformity with mandate of requirements laid down in Section 65A of Transfer of Property Act and not otherwise—Neither mortgagor nor lessee can defeat right of mortgagee and no lessee can claim any protection unless his tenancy is as per requirements of Section 65A of Transfer of Property Act—No interference required in orders passed by DRAT.

IV (2006) BC 299 (Delhi HC) (DB)

— **Sections 35, 37**—Arbitration and Conciliation Act, 1996—Sections 7, 8, 16—Arbitration Agreement—Existence of—Not proved—Arbitration agreement must be clear and unequivocal—Nothing on record to show applicant subscribed to term of arbitration in announcements made during auction of mortgaged land—At the most it can be said applicant was aware of those announcements—In absence of any evidence to conclude parties were *ad idem* on point of arbitration, proceedings cannot be relegated to

Arbitrator—Arbitration clause was applicable on relevant date and not beyond such date—Any dispute arising at time of acceptance could be sorted out then and there—Nothing on record to show parties agreed to resolve dispute through arbitration.

IV (2006) BC 85 (DRT—Nagpur) (DRAT/DRT)

— **Section 37**—Transfer of Property Act, 1882—Section 65A—Lease of Property—Provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act or rules are in addition to and not in derogation of any other law for time being in force—Section 65A of Transfer of Property Act applicable—If appellant- Bank wants to take away rights of mortgagor under Section 65A of Transfer of Property Act to lease property they will have to ensure and prove strictly prohibition in mortgage deed to lease property.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

Stamp Act, 1899

— **Section 2(17), Articles 6, 40(b), Schedule 1B**—Transfer of Property Act, 1882—Section 58(f)—Mortgage Deed—Determination—Mortgage by deposit of title deeds in absence of any special terms of bargain extends to secure property to which title deeds relate—Conditions created by mortgage deed do not flow out as ordinary incidents of mortgage by deposit of title deed itself—Provisions in mortgage deed indicate terms of transaction of mortgage reduced into writing in this document and deed creates rights and operates as transfer of interest—It contains all conditions which one may find in mortgage deed—Terms of instrument creates interest in property for securing loan—Applying test laid down in *Deb Dutt's* case by Supreme Court, instrument is mortgage deed.

IV (2006) BC 239 (Allahabad HC)

State Financial Corporations Act, 1951

— **Section 29**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 34(2)—Provisions of SFC Act and RDDBFI Act mutually exclusive—Section 34(2) of RDDBFI Act states provisions of SFC Act are in addition and not in derogation of former Act—Remedies under SFC Act not abrogated while resorting to remedy under SFC Act or *vice versa*.

IV (2006) BC 126 (DRT—Mumbai) (DRAT/DRT)

Transfer of Property Act, 1882

— “Debt”—Expression not defined in Transfer of Property Act—Question whether meaning of word debt in RDDBFI Act will be same as in Transfer of Property Act does not arise and cannot be considered.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

— “Debt”—Covers all actionable claim but not *vice versa*—Every debt is actionable claim but every actionable claim is not debt—Word debt not defined in Transfer of Property Act as appearing in definition of actionable claim and meaning to be derived from definition under Section 2(g) of RDDBFI Act—Word to be given meaning in its widest amplitude.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

— **Section 3**—“Actionable Claim”—Claim secured by hypothecation of vehicles—Actionable claim means claim not secured by movable or immovable properties, *i.e.* which is simplicitor debt—Claim having been secured does not constitute actionable claim.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

— **Section 8**—Operation of transfer—Transfer of property under Section 8 of Act is immediate transfer to transferee unless otherwise intention is express or implied—Clause emphasised does not mean transfer of arrears of interest is also subject matter of intention express or implied—Thus assignment of interest not legal—Applicant entitled to principal amount stated in Deed of Assignment and not interest.

IV (2006) BC 157 (DRT—Mumbai) (DRAT/DRT)

— **Sections 52, 65A, 96**—Lease of Mortgaged Property—Validity—Doctrine of *lis pendens*—Effects of mortgage by deposit of title deeds are same as that of simple mortgage—Possession of property remains

with mortgagor and not with mortgagee—Only right mortgagee has is to sell property for purpose of recovery of his dues—These two factors weighed with Full Bench in case of *Anaji Thamaji Patil*, AIR 1973 Bom. 75 to uphold validity of lease created by agricultural land not by borrower himself but by person who had purchased mortgaged property from mortgagor.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

— **Section 58(f)**—Stamp Act, 1899—Section 2(17), Articles 6, 40(b), Schedule 1B—Mortgage Deed—Determination—Mortgage by deposit of title deeds in absence of any special terms of bargain extends to secure property to which title deeds relate—Conditions created by mortgage deed do not flow out as ordinary incidents of mortgage by deposit of title deed itself—Provisions in mortgage deed indicate terms of transaction of mortgage reduced into writing in this document and deed creates rights and operates as transfer of interest—It contains all conditions which one may find in mortgage deed—Terms of instrument creates interest in property for securing loan—Applying test laid down in *Deb Dutt's* case by Supreme Court, instrument is mortgage deed.

IV (2006) BC 239 (Allahabad HC)

— **Section 65A**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Section 17(1)—Delhi Rent Control Act, 1958—Section 14(1)—Protection of tenant against eviction—Restraint order against bank from taking over physical possession of secured asset, *i.e.* mortgaged property—Power of mortgagor to lease mortgaged property not unfettered but conditioned under Sections 65A(1), 65A(2), 65A(3) of Transfer of Property Act—Unregistered lease created for alleged unlimited period through unregistered lease deed in complete contravention of Section 65A, Transfer of Property Act—Lessee can enjoy protection if lease is created by mortgagor in conformity with mandate of requirements laid down in Section 65A of Transfer of Property Act and not otherwise—Neither mortgagor nor lessee can defeat right of mortgagee and no lessee can claim any protection unless his tenancy is as per requirements of Section 65A of Transfer of Property Act—No interference required in orders passed by DRAT.

IV (2006) BC 299 (Delhi HC) (DB)

— **Section 65A**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Section 37—Lease of Property—Provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act or rules are in addition to and not in derogation of any other law for time being in force—Section 65A of Transfer of Property Act applicable—If appellant- Bank wants to take away rights of mortgagor under Section 65A of Transfer of Property Act to lease property they will have to ensure and prove strictly prohibition in mortgage deed to lease property.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 65A(1), 65A(3)**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Sections 13(1), 17—Lease—Validity—Jurisdiction of DRT to decide—When important legal right of party sought to be taken away, *i.e.* right of mortgagor to give mortgaged property on lease, contrary intention to be unequivocally expressed in mortgage deed—In absence of such express condition or intention to contrary as envisaged under Section 65A(3), right vested under Section 65A(1) cannot be taken away—If mortgagor himself cannot evict lessee without following due process of law, appellant-Bank, which only steps into shoes of mortgagor, cannot evict respondent No. 1 Corporation without initiating eviction proceedings under provisions of Transfer of Property Act or Rent Control Act.

IV (2006) BC 148 (DRAT—Mumbai) (DRAT/DRT)

— **Section 73**—Right to proceed of revenue sale or compensation on acquisition—Public Dues—Mortgagee would not have any priority over dues of public nature—When mortgaged properties are brought to sale by public authorities for realizing debts of public nature, mortgagee has right to claim residue of sale proceeds.

IV (2006) BC 371 (AP HC)
