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IV (2006) BC 13 (DRAT—Chennai) (DRAT/DRT)

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IV (2006) BC 91 (Karnataka HC)

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IV (2006) BC 91 (Karnataka HC)

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IV (2006) BC 54 (Madras HC)

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IV (2006) BC 177 (Kerala HC)

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IV (2006) BC 91 (Karnataka HC)

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IV (2006) BC 84 (AP HC)

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IV (2006) BC 147 (Kerala HC)

—Territorial jurisdiction—Account payee cheque issued by drawer—Court where payee's Bank situated has jurisdiction to entertain suit—In view of issue of account payee cheque, it is clear drawer desires to pay amount through Bank which keeps account of payee.

IV (2006) BC 104 (Kerala HC) (DB)

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IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

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IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

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IV (2006) BC 65 (DRAT—Mumbai) (DRAT/DRT)

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IV (2006) BC 65 (DRAT—Mumbai) (DRAT/DRT)

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IV (2006) BC 16 (DRT—Mumbai) (DRAT/DRT)

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IV (2006) BC 58 (AP HC)

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IV (2006) BC 34 (Bombay HC)

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IV (2006) BC 58 (AP HC)

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IV (2006) BC 51 (Rajasthan HC) (DB)

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IV (2006) BC 106 (AP HC)

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IV (2006) BC 108 (Delhi HC) (DB)

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IV (2006) BC 180 (Karnataka HC)

JOINT TRIAL—Dishonour of Cheque—Rule is for every distinct offence there should be separate charge and every such charge should be tried separately—True the Magistrate may try together all or any number of charges framed against accused, if he so desire, and also if Magistrate is of opinion accused not likely to be prejudiced by such course of action—But that does not mean two cases involving offence under Section 138 of Act prosecuted by two different complainants arising from separate causes of action can be tried together only for reason that accused person is same—It is inconceivable as to how common accused in two complaints filed by two different complainants *albeit* alleging commission of same offence (Section 138, N.I. Act), under different circumstances, can seek benefit of Section 219 or 220, Criminal Procedure Code—Documents in two cases to be marked separately and merit of two cases to be evaluated separately—It may be true that offence in two cases is of same kind—Common factor is only petitioner is accused in two cases—Magistrate justified in dismissing applications.

IV (2006) BC 177 (Kerala HC)

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IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

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IV (2006) BC 58 (AP HC)

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IV (2006) BC 199 (Karnataka HC) (DB)

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IV (2006) BC 152 (Delhi HC)

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IV (2006) BC 135 (Delhi HC)

—Suit by bank for recovery of Rs. 4,85,250.40— Only cause of action against defendant based upon sole guarantee deed allegedly executed by defendant No. 3—Said deed witnessed by none—No explanation why guarantee executed to extent of Rs. 7,84,361.40 when transaction only for Rs. 3,17,804.40—Issues raised by defendant have merit—Application for leave to defend not based on fabricated or false documents or documents produced by defendant himself—Majorly documents in possession and power of plaintiff bank—Opportunity to prove his case by proper and cogent evidence to be given to defendant—Conditional leave to defend granted.

IV (2006) BC 7 (Delhi HC) (DB)

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IV (2006) BC 7 (Delhi HC) (DB)

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IV (2006) BC 180 (Karnataka HC)

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IV (2006) BC 54 (Madras HC)

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IV (2006) BC 16 (Uttaranchal HC)

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IV (2006) BC 16 (Uttaranchal HC)

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IV (2006) BC 188 (Bombay HC) (DB)

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IV (2006) BC 16 (DRT—Mumbai) (DRAT/DRT)

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IV (2006) BC 16 (DRT—Mumbai) (DRAT/DRT)

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IV (2006) BC 21 (Delhi HC) (DB)

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IV (2006) BC 108 (Delhi HC) (DB)

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IV (2006) BC 62 (Delhi HC)

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IV (2006) BC 34 (Bombay HC)

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IV (2006) BC 119 (Delhi HC) (DB)

—Rules—Earlier there were only two rules of natural justice, *viz.* giving opportunity of hearing and rule against bias—In recent times third rule of natural justice developed by Courts all over world, *viz.* requirement to give reasons in order affecting rights or liabilities.

IV (2006) BC 119 (Delhi HC) (DB)

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IV (2006) BC 106 (AP HC)

RECEIVER—Appointment of—Receiver can be appointed by Court passing decree with all powers under Order 40 Rule 1, CPC in execution of decree—Once receiver appointed it has all powers conferred by Court for passing decree under Section 51(d), CPC—Court passing decree retains power and jurisdiction to execute said decree.

IV (2006) BC 34 (Bombay HC)

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS (RDDBFI)—Amendment of memo of appeal—Discretion of appellate Court—Plea taken by Bank that they should be given further opportunity to establish their case by giving more evidence and if necessary to cross-examine witnesses of borrower—No ground to reject such amendment, although filed belatedly—It is appellate Court's discretion to give further opportunity to appellant, as filing of replication, cross-examination of defence witnesses for purpose to remand case for fresh disposal, if circumstances arise so.

IV (2006) BC 53 (DRAT—Allahabad) (DRAT/DRT)

—Appeal against interlocutory order—Compromise proposal between creditor Bank and judgment debtor-borrower—Appellant auction purchaser is third party having no right to question about deal of compromise between decree holder-creditor Bank and judgment debtor-borrower—Compromise arrived at not on basis

of OTS scheme and question of RBI guidelines do not arise—When auction purchaser has come into picture then his interest should also be protected as per provisions of Order 21, Civil Procedure Code and different provisions of II Schedule of Income-tax Act, acceptable under Section 29 of Debts Recovery Tribunals Act—No scope for Appellate Tribunal to enter into such matter—Present appeal is immatured one having no finalization being made till date towards acceptance of compromise and regarding validity or otherwise of auction sale by which appellant auction purchaser came into picture.

IV (2006) BC 79 (DRAT—Allahabad) (DRAT/DRT)

—Attachment or Sale of Property—Alternative Remedy—Existence of—Exercise of writ jurisdiction—Recovery Officer empowered to decide objection made to attachment or sale of property under Rule 11 of Rules in Second Schedule to Income-tax Act—In case of any adverse orders, petitioners could appeal to Debts Recovery Tribunal under Section 30 of Act—Exercise of jurisdiction under Article 226 of Constitution not justified to resolve disputed questions of fact when statutory remedy available under Act.

IV (2006) BC 130 (Kerala HC)

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IV (2006) BC 72 (DRAT—Mumbai) (DRAT/DRT)

—“Debt”—Return of cheque for insufficient funds—Liability of defendant-Banks—Definition of debt is comprehensive and includes any liability arising during course of business activity undertaken by Bank—Liability claimed by applicant Bank surely meets that test—Applicant Bank castigated both defendants for fiasco by contending they were negligent—Negligence attributed to defendant No. 2 is in not cancelling stamps on cheque while returning dishonoured cheque to G.B. and Co.—Alleged negligence of 1st defendant is in not ensuring that 2nd defendant's stamps on cheque were cancelled and in failing to affix its encoding on reverse of cheque—Best evidence is cheque itself in original—Same not available—Applicant Bank not shown prudence of preserving cheque when everything revolved on it—Since there is clearly stamp of 1st defendant on cheque, non-cancellation of stamps of 2nd defendant paled into insignificance—Applicant Bank ought to have known from 1st defendant's stamp on same that it had come to it from 1st defendant—1st defendant not in anyway negligent—Applicant Bank at time of collecting cheque in clearing house should have refused to accept same on face of stamps of defendant No. 2—Had applicant vigilant, it would not have wrongly returned cheque to 2nd defendant and resultant loss would not have been caused—Attempt to shift liability on defendants unsustainable—Applicant liable to be non-suited.

IV (2006) BC 23 (DRT—Mumbai) (DRAT/DRT)

—Deposit of amounts to debt due, on filing appeal—Pre-deposit of less than 75% of amount as was required under Act—Stay of recovery proceedings without admitting appeal—Tribunal considered facts and circumstances of case before arriving at conclusion whether sum of Rs. 30 lacs sufficient security for compliance of Section 21 of Act—Tribunal aware of fact that entire decretal amount is lying secured with petitioner and deposit of Rs. 30 lacs is over and above security already lying with Bank—Tribunal considered financial position of respondent as also merits of grounds of appeal while arriving at its conclusion—No reason for this Court under Article 227 to substitute its own opinion for that of Appellate Tribunal when no glaring jurisdictional error or miscarriage of justice occurred.

IV (2006) BC 102 (Delhi HC)

—*Ex parte* judgment—Setting aside—Restoration of petition—Deposit of amount as pre-condition—Presumption of service of registered notice—From records of original application it appears deemed service accepted by Registrar and PO of DRT on ground that defendants refused to accept notices, but there is no document nor any evidence against regarding such refusal—Rebuttable presumption of service on proper and correct address was not ground when deemed service was made in proceedings of original application, rather deemed service made on ground of refusal—Benefit goes in favour of appellant-defendants that they had not received notice—Deemed service as held by PO, improper on face of it—Appellants entitled to seek justice in reopening case and being fought inter parties—Case is of 1998 and almost decade passed and matter comes to nascent stage when revival of case allowed—Public money involved should be taken care of in circumstances—Restoration petition filed by appellants allowed on pre-condition of deposit of Rs. 5.00 lacs with respondent-Bank within 2 months from date in question.

IV (2006) BC 69 (DRAT—Allahabad) (DRAT/DRT)

—Notice—Service of—Presumption—If registered notice sent in proper and correct address and acknowledgement does not come back within 30 days, Tribunal/Court are at liberty to take presumption that notice served—Such presumption always rebuttable presumption as defendants can rebut such presumption by proper documents or evidence.

IV (2006) BC 69 (DRAT—Allahabad) (DRAT/DRT)

—Property of person notified under Special Courts Act cannot be sold in execution of certificate obtained under provisions of RDBFI Act—Certificate against such properties cannot be executed by Recovery Officer under DRT Act—Financial Institution will have to move Special Court in respect of attached property.

IV (2006) BC 1 (Bombay HC) (DB)

—Protection under Section 22(1) of SICA given only to industrial company, *i.e.* principal borrower and not to guarantor—Appellant is industrial company, already declared as sick company—Entire proceedings have come to halt—No proceedings could be proceeded with except with consent of BIFR—Order passed by DRT liable to be set aside.

IV (2006) BC 7 (DRAT—Chennai) (DRAT/DRT)

—Recovery of amount with *pendente lite* and future interest—Grant of C.C. (Hypothecation) Facility, Inland Letter of Credit Facility, Bills Discounting Facility, Cash Credit (Pledge) Facility in favour of defendant No. 1—Execution of loan security documents and guarantee deeds with duly registered mortgage deed—Various pleas taken by defendants are sham and afterthought—Defendants signed documents after going through contents thereof—Defendant Nos. 1 to 5 availed facilities and financial discipline not maintained by defendants—No reason to disbelieve evidence led by applicant Bank because same filed by way of affidavits of its officials based on documents—No vested interest involved for them to depose falsely—Applicant Bank succeeded in proving its claim against defendant Nos. 1 to 5—Globally and domestically, rates of interest are falling down drastically—Interest of justice will be served if *pendente lite* and future interest awarded @ 10% p.a.—Directions issued accordingly.

IV (2006) BC 27 (DRT—Delhi) (DRAT/DRT)

—Suit filed under RDBFI Act pending—Notice under Section 13(2) SRFAESI Act issued by Bank during pendency of O.A.—Parallel proceedings under both Acts—Permission of Tribunal required for withdrawing application pending before it—No action can be taken under SRFAESI Act without such permission—No permission sought from Tribunal for withdrawal of any application pending—Lack of knowledge in matter of current legal principles not appreciable—Notice of Bank invalid being unsustainable.

IV (2006) BC 4 (DRT—Allahabad) (DRAT/DRT)

—Suit for recovery of amount together with *pendente lite* and future interest—Bank tried to prove its claim on basis of its oral and documentary evidence—Amount claimed in claim arises out of liability incurred during ordinary course of banking business activity—Defendants utilized funds released by Bank through current account without there being any credit balances—Even defendants acknowledged liability after fraud detected and also made part payment towards dues outstanding—Acknowledged amount and cheques produced duly certified under Banker's Books Evidence Act—Claim proved to be filed by authorized and

competent person—Admission by defendant No. 4 of his liability makes his liability co-extensive with that of defendant Nos. 1 to 3 and 6—Defendant Nos. 2 and 3 acknowledged debt and on account of their admission, their liability established—Claim of applicant Bank very much within limitation from date of acknowledgement—No extraordinary circumstances to justify reduction of rate of interest from 21.75% p.a. with quarterly rest.

IV (2006) BC 48 (DRT—Delhi) (DRAT/DRT)

RECOVERY SUIT—Acknowledgement of debt due—Acknowledgement executed within subsistence of period of limitation—It creates fresh period of limitation from date of acknowledgement—Question of acknowledgement being time-barred, does not arise.

IV (2006) BC 180 (Karnataka HC)

—Default in payment—Execution of Decree—Applicability of Section 33 of CPC.....(*See Execution of Decree*)

IV (2006) BC 34 (Bombay HC)

—Interest on Loan Amount—Concession—Suit for recovery of money by sale of mortgaged properties—Calculated interest demanded by plaintiff was accepted by defendants and they sent payment of Rs. 87,791.70 towards interest payable on loan advanced—Documents clearly show plaintiff at no point of time raised any protest with regard to rate of interest nor justified any circumstances under which plaintiff agreed to charge concessional rate which is not part of loan agreement—Once contract between parties particularly in relation to mortgaged property provides for rate of interest, Court has no jurisdiction to alter or vary said rate of interest even *pendente lite* and future.

IV (2006) BC 152 (Delhi HC)

—Leave to defend—Triable issues raised by defendant—Conditional leave to defend granted.....(*See Leave to Defend*)

IV (2006) BC 7 (Delhi HC) (DB)

—Partnership firm—HUF liability in partnership firm as partner—Borrower (defendant No. 1) is partnership firm—Defendant Nos. 2 and 3 are sued as its partners—Defendant Nos. 5 and 6 sued as being members of partners of defendant No. 2—HUF—Defendant Nos. 3 to 5 sued as guarantors—HUF cannot become partner of firm because firm is an association of individuals while HUF itself is floating body and not individual person—Fact that defendant No. 3 signed as partner of firm would make one to believe defendant No. 4 also signed as partner of firm and in his individual capacity not as HUF—Defendant No. 4 would be partner on behalf of HUF and would be accountable to HUF but not that HUF is itself partner, when there is embargo for HUF becoming partner—Observation that O.A. against defendant Nos. 2, 5 and 6 fails, reaffirmed.

IV (2006) BC 16 (DRT—Mumbai) (DRAT/DRT)

—Partnership firm—Borrower—Defendant No. 1 (Firm) had account with applicant Bank—It enjoyed credit facilities in 1991—Statement of account shows accounts were in effective operation till end of 1997—Account was continuously having debit balance—If defendant No. 1 enjoyed credit facilities, it did it because they executed security documents—This Court has no hesitation in discarding defence and holding that applicant proved its case—Applicant has not laid foundation for granting penal interest, it cannot be allowed—Bank shall accept amount with 6% interest p.a. if paid within 6 months.

IV (2006) BC 16 (DRT—Mumbai) (DRAT/DRT)

—Recovery Certificate—Issuance of—Respondent Bank made out case for issuance of recovery certificate on basis of admission given by defendants in balance sheet, produced in Court through affidavit of Bank's officer—Term 'defendant' only connotes that admission must be of 'defendant' even if made before filing of proceedings, as distinguished from admission of third party, who is not party to proceedings, though admissible under Sections 18 to 21 of Evidence Act—Respondent Bank relied on figure in balance sheet admitted to be due from appellants to Bank—Same proved through affidavit evidence given by Bank but not denied by appellants in reply affidavit.

IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

—Recovery of Loan Amount—Plea of fraud taken by defendants is void of any specific pleading and any cogent evidence in support thereof—Various documents produced and proved by plaintiff and even by defendant's documents subsequent to letter of offer of loan by lender, its acceptance by borrower as well as after execution of loan agreement, not even whisper made about fraud—It is mere after thought and without any substance.

IV (2006) BC 152 (Delhi HC)

—Repayment of Loan Amount—Acknowledgement of debt due—Debt incurred by person since deceased—Father of deceased not a guarantor for transaction—Undertaking by defendant-father acknowledging debt and to pay Bank loan amount on behalf of his son—He paid certain instalments after undertaking and thereafter became defaulter—He is estopped from denying such repayment—Acknowledgements made well within period of limitation—Undertaking given by father to pay loan incurred by son in good consideration to purchase peace for family and save estate of his son from attachment and sale in execution.

IV (2006) BC 180 (Karnataka HC)

—Recovery of Loan Amount—Concluded contract between parties by documents—Parties cannot question correctness or validity of these agreements and documents under which they availed benefits for all this period and loan disbursed in terms thereof—No substantive variation in terms of loan and loan agreement—They were complementary to each other and formed integral part to reschedule of payment—Plaintiff not committed any breach of terms of agreement between parties which is primarily attributable to defendants—Terms of agreement between parties clearly provided for charging of interest on loan amount @ 21.5% p.a. and also for additional interest @ 6% p.a. on defaulted amount—Plaintiff entitled to contractual rate of interest in mortgaged suit.

IV (2006) BC 152 (Delhi HC)

—Repayment of Loan—Return of Title Deeds—Payments of entire dues by borrower—Petitioner availed financial assistance by virtue of agreement and deposited title deeds towards security for repayment of said financial assistance—Once all dues of Corporation arising out of said agreement providing financial assistance paid, action of Corporation in not returning title deeds is nothing but abuse of powers vested in said Corporation—Corporation failed to act with due diligence causing avoidable harassment to petitioner—Action of Corporation wholly arbitrary, unreasonable and without any legal sanction.

IV (2006) BC 128 (P&H HC) (DB)

REJECTION OF PLAINT—Suit for declaration simplicitor without seeking consequential relief—Appellant sought declaration and injunction (*ad interim*) restraining respondent from giving effect to that communication till disposal of suit—Rejection of suit sought on ground that relief of declaration without claiming any consequential relief barred under Section 34 of Specific Relief Act and payment of Court fee—Order of Single Judge directing appellant to amend plaint of their suit and include consequential relief in prayer clause cannot stand test of judicial scrutiny—Plaintiff is *dominus litus* and free to choose his remedy he wants in suit—It is not open to Court to import into plaint or to read into it any relief not asked for by party in order to levy higher Court fee—Impugned order of Single Judge set aside—Single Judge shall decide application under Order 39 Rules 1 and 2, CPC uninfluenced by any observation contained in order.

IV (2006) BC 108 (Delhi HC) (DB)

RES JUDICATA—Constructive *Res Judicata*—Applicability—There must be prior proceedings between same parties directly and subsequently raising very same issue and said proceedings ought to have decided on merits.

IV (2006) BC 34 (Bombay HC)

REVISION—Recovery Suit—Finding of fact not to be interfered, unless shown no judicial man can ever rear to such conclusion.

IV (2006) BC 19 (MP HC)

SRFAESI—“Borrower”—Meaning of term—Notice under Section 13(2) of Act can be issued only after

account of borrower classified as NPA—Person covered by particular item of word “Borrower” in Section 2(1)(f) may not necessarily be same for purpose of Section 13(2)—Borrower in Section 13(2) of Act could be one having account with Bank—Contention of applicant that “Borrower” in Section 2(1)(f) should be same in Section 13(2) of Act not accepted.

IV (2006) BC 41 (DRT—Mumbai) (DRAT/DRT)

—Equitable Mortgage—Creation of—Not necessary to deposit all or most material documents of title—But documents deposited should show *prima facie* title deed to property in depositor and not enough that documents should relate to title to property—Agreement of sale also not deposited much less with assurance that original after receiving from Registrar of assurances would go to Bank—Flat in question cannot be held Bank’s security—Bank could not take recourse to provisions of SRFAESI Act—Action unsustainable—Bank directed to return possession of flat to applicant—In absence of any iota of evidence, compensation cannot be granted to applicant—Respondent cannot be allowed to continue illegality of retaining possession—Ends of justice would be met by directing respondent to return possession of flat to applicant within one week failing which to give daily compensation of Rs. 300/- per day until returning back possession.

IV (2006) BC 38 (DRT—Mumbai) (DRAT/DRT)

—Limitation—Notice of Possession—Circumstances on record are in favour of applicant’s case—Fact that notice was published in newspapers dated 1.11.2005, is clear indication of fact that notice itself given on or about said date—Respondent Bank not tried to explain why notice published after more than three months of service—It is believed notice served on 1.11.2005 from which time application filed within limitation.

IV (2006) BC 1 (DRT—Pune) (DRAT/DRT)

—NPA Account—Classification—Justification—Doctrine of Issue Estoppel—Tribunal gave liberty for removal of doubt in minds of parties to effect that account could never be classified as NPA—By said clarification, Tribunal did not allow reopening and reargitation of issue of classification of account as NPA on same set of facts—Doctrine of Issue Estoppel also prevents that course being followed—Bank could not have classified account as NPA on same set of facts on 30.11.2003 and issued notice under Section 13(2) of Act.

IV (2006) BC 41 (DRT—Mumbai) (DRAT/DRT)

—NPA Account—One Time Settlement—Petitioner defaulted in making payment—Recovery proceedings initiated—Account of petitioner declared NPA—Petitioner seeks direction to pursue claim towards foreign bills of ECGC but same rejected not only once but in second instance also said claim rejected—Question of regularising and upgrading of account does not arise as petitioner failed to take advantage of OTS as he failed to deposit amount as demanded after deposit of Rs. 2 lacs—Petitioner has right to approach DRT after recovery measure is taken—Writ Petition involves several disputed question which cannot be decided by this Court while exercising power under Article 226 of Constitution.

IV (2006) BC 193 (Rajasthan HC)

—Notice—Legality—NPA Account—One should not be required to do forensic examination and analysis of notice of statutory notice for finding whether classification of account as NPA was proper—Bank did not bother to send chart with notice under Section 13(2) of Act to borrower giving details as to how account was classified as NPA—Impugned notice under Section 13(2) being omnibus is bad in law—Action of Bank under Act illegal and unsustainable against applicants.

IV (2006) BC 41 (DRT—Mumbai) (DRAT/DRT)

—Suit filed under RDBFI Act pending—Notice under Section 13(2) SRFAESI Act issued by Bank during pendency of O.A.—Parallel proceedings under both Acts—Permission of Tribunal required for withdrawing application pending before it—No action can be taken under SRFAESI Act without such permission—No permission sought from Tribunal for withdrawal of any application pending—Lack of knowledge in matter of current legal principles not appreciable—Notice of Bank invalid being unsustainable.

IV (2006) BC 4 (DRT—Allahabad) (DRAT/DRT)

—Waiver and abandonment—Applicant averred in clear terms that after his payment of Rs. 1.17 lacs

account became performing asset and applicant re-delivered possession and abandoned and waived rights available to it under Act—Respondent chose not to deal with this averment and admitted contents thereof—It is assumed theory of waiver and abandonment of rights available to respondent in Act is correct.

IV (2006) BC 1 (DRT—Pune) (DRAT/DRT)

—Waiver and Abandonment—Bank not deprived from taking action under Act for all times—Waiver and abandonment is of right available under particular notice—Respondent Bank not prevented from resorting to Act, if after re-delivery of possession account again becomes NPA and respondent Bank follows necessary and relevant procedure—Notice vague and gives impression as if it is continuation of first notice—Respondent's right under first notice had come to end—Resort to provisions of Act by way of continuation of first notice not legal—Taking symbolic possession is also not legal.

IV (2006) BC 1 (DRT—Pune) (DRAT/DRT)

SENTENCE—Suspension of —Dishonour of Cheque—Accused awarded one year RI and fine of Rs. 5,000/- Fine amount already deposited and petitioner lodged in jail for past 1 month and 10 days—Jail sentence of accused suspended during pendency of revision and released on bail with conditions.

IV (2006) BC 99 (P&H HC)

—Indira Vikas Patra—Loss of—Depositor entitled to get payment of maturity.

IV (2006) BC 86 (Kerala HC) (DB)

SICA—Bar on Jurisdiction of Civil Court by virtue of Section 26 of SICA.....(*See Jurisdiction*)

IV (2006) BC 82 (MP HC)

—Suspension of legal proceedings, contracts—Protection under Section 22(1) of SICA given only to industrial company, *i.e.* principal borrower and not to guarantor—Appellant is industrial company, already declared as sick company—Entire proceedings have come to halt—No proceedings could be proceeded with except with consent of BIFR—Order passed by DRT liable to be set aside.

IV (2006) BC 7 (DRAT—Chennai) (DRAT/DRT)

SPECIAL COURTS—Property of person notified under Special Courts Act cannot be sold in execution of certificate obtained under provisions of RDBFI Act—Certificate against such properties cannot be executed by Recovery Officer under DRT Act—Financial Institution will have to move Special Court in respect of attached property.

IV (2006) BC 1 (Bombay HC) (DB)

STATE FINANCIAL CORPORATION—Applicability of Doctrine of Promissory Estoppel—Ordinarily Court in exercise of its writ jurisdiction, should not interfere with decision taken by Corporation as it is statutory organisation—But doctrine of promissory estoppel would apply as against Financial Corporation if case is made out therefor.

IV (2006) BC 132 (SC)

—Sanctioned loan not disbursed in time—Rightly or wrongly amount of subsidy not paid to Corporation for more than 15 years—Now unit is lying closed—High Court and this Court not called upon to determine question as to who was responsible therefor—No purpose would be served by directing Corporation to pay respondent said amount at this point of time—Serious dispute regarding viability of revival of entire unit — This Court evidently cannot determine such disputed question of fact in these proceedings—Futile to issue writ or in nature of *mandamus* directing Corporation to pay amount of Rs. 15 lacs to respondent-Company—Further observations made by this Court—Impugned judgment unsustainable—Set aside.

IV (2006) BC 132 (SC)

SUMMONS—Process of issue—Application for leave to defend—Plaintiff to serve upon defendant summons for judgment giving him no less than ten days from date of service and defendant to apply for leave to defend within 10 days from service of such summons for judgment—Substituting of new Form No. 4 by High Court giving 30 days period at once instead of instalment of 10 days to defendant—Forms could not supersede rules—Forms are meant to give effect to rules—Amended form deleted by High Court after about 2½ years by notification in gazette—Order of lower Court pronouncing judgment on basis that issue

of summons in substituted form proper, set aside—Matter remanded back to Trial Court for following procedure prescribed under Order 37 Rule 3 Civil Procedure Code from stage of issuing summons for judgment.

IV (2006) BC 100 (Bombay HC)

SUSPENSION OF SENTENCE PENDING APPEAL—Discretionary—Power of Appellate Court—Exercise of—Discussed.

IV (2006) BC 147 (Kerala HC)

—Imposition of conditions—Legality—Dishonour of Cheque—Though Appellate Court is empowered to impose condition for suspension of execution of sentence, while admitting appeal, condition shall be reasonable and commensurate with or proportionate with sentence imposed—Scope of provision of discretion of Appellate Court to exercise power discussed.

IV (2006) BC 147 (Kerala HC)

TENDER—Contract for construction of Paradip Refinery—Abysmal lack of commitment and abandonment of work—Show cause notice placing respondent on holiday list and debarring him from entering into new contracts and de-listing from list of approved vendors/contractors—Mere existence of reasons in show cause notice, or any material referred to in show cause notice, not sufficient—Reasons must be contained in order under challenge—Authority concerned must discuss explanation given in reply and give its reasons for holding explanation is not satisfactory—In present case, that has not been done—Impugned order in writ petition does not disclose any reason and it is bad in law.

IV (2006) BC 119 (Delhi HC) (DB)

WORDS AND PHRASES—“Abandonment”—Meaning of.

IV (2006) BC 199 (Karnataka HC) (DB)

—‘Mandate’.

IV (2006) BC 54 (Madras HC)

WRIT OF HABEAS CORPUS OR QUO WARRANTO—Exception to general rules—They are on public interest and other writs are for enforcing private or individual rights.

IV (2006) BC 111 (Madras HC) (DB)

WRIT JURISDICTION—Exercise of—Existence of alternative remedy.....(See *RDDBFI*)

IV (2006) BC 130 (Kerala HC)

—Exercise of—Party has no right to get one time settlement scheme—Court under Article 226 of Constitution cannot direct for OTS and can only interfere when there is violation of law.

IV (2006) BC 188 (Bombay HC) (DB)

—Powers under Article 226 should be sparingly used, where rights of person seriously infringed and no other adequate and specific remedy available to him—Exception to general rule is only in cases where writ applied for is Writ of *habeas corpus* or *quo warranto* or filed in public interest.

IV (2006) BC 111 (Madras HC) (DB)

—Private companies not amenable to writ jurisdiction under Article 226, Constitution.

IV (2006) BC 111 (Madras HC) (DB)

WRIT OF MANDAMUS—Disputed question of fact involved this Court cannot determine such question in these proceedings.

IV (2006) BC 132 (SC)

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IV (2006) BC 111 (Madras HC) (DB)

—Maintainability—Writ petition filed against non-nationalized Bank and nominee Directors in Board of such Bank relating to transfer of certain shares in Bank—Writ petition not maintainable against private Bank—In normal functioning of private Banking company there is no participation or interference of State or its authorities—Regulations framed by Reserve Bank of India are by way of supervisory vigilance—These are purely commercial activities—Court does not get jurisdiction to hear writ petition merely because Reserve Bank of India arrayed as party.

IV (2006) BC 111 (Madras HC) (DB)

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IV (2006) BC 21 (Delhi HC) (DB)

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IV (2006) BC 62 (Delhi HC)

Banking Regulation Act, 1949

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IV (2006) BC 79 (DRAT—Allahabad) (DRAT/DRT)

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IV (2006) BC 82 (MP HC)

— **Section 11**—*Res Judicata*—Applicability—Recovery of amount—No prior proceedings in which validity of execution of decree put in issue by defendant-judgment debtor—Report of Court Receiver as well as Judges order were only taken as step in further execution of said decree not questioning validity of said decree—Principle of *res judicata* or constructive *res judicata* not applicable.

IV (2006) BC 34 (Bombay HC)

— **Section 34**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 19—Suit for recovery of amount with *pendente lite* and future interest—Grant of C.C. (Hypothecation) Facility, Inland Letter of Credit Facility, Bills Discounting Facility, Cash Credit (Pledge) Facility in favour of defendant No. 1—Execution of loan security documents and guarantee deeds with duly registered mortgage deed—Various pleas taken by defendants are sham and afterthought—Defendants signed documents after going through contents thereof—Defendant Nos. 1 to 5 availed facilities and financial discipline not maintained by defendants—No reason to disbelieve evidence led by applicant Bank because same filed by way of affidavits of its officials based on documents—No vested interest involved for them to depose falsely—Applicant Bank succeeded in proving its claim against defendant Nos. 1 to 5—Globally and domestically, rates of interest are falling down drastically—Interest of justice will be served if *pendente lite* and future interest awarded @ 10% p.a.—Directions issued accordingly.

IV (2006) BC 27 (DRT—Delhi) (DRAT/DRT)

— **Section 34**—Interest—Rate of—Repayment of loan amount—Loan obtained for self-employment and interest charged was at 10%—Having regard to nature of transaction and current rate of interest, plaintiff entitled to interest @ 6% on amount of Rs. 28,250/- from date of suit till payment.

IV (2006) BC 180 (Karnataka HC)

— **Sections 38, 39(b), 39(d), 39(4) (introduced by Amending Act of 2002), 51(d), 51, 151, Order 21 Rule 89, Order 21 Rule 92, Order 40**—Execution of Decree—Recovery of Amount—Consent Terms—Default in payment—Prohibition against execution of decree against any person or property not situated within local limits of its jurisdiction *vide* Section 39(4) CPC—Provisions of Section 39 CPC not applicable in cases of execution of decree *via* Court Receiver under Clause (d) of Section 51, CPC—Power of execution of decree by Court which has passed decree is intact till Court decides in

facts of case that transmission of decree to other Court is necessary for purposes of execution—Transfer of decree is provided where decree has to be executed by mode of attachment and sale in Court or local limits in whose jurisdiction said property is situated—Once Court puts decree in execution by adopting one of modes prescribed under Section 51 of CPC then provisions of Order 21 would apply in so far it relates to said mode of execution—Provisions of Section 39(4) do not apply and has no application when execution of decree is *via* mode of Court Receiver under Section 51(d) of CPC—Provisions of Section 39 do no place any limitation on power of Court under Section 51(d), CPC.

IV (2006) BC 34 (Bombay HC)

— **Sections 51(a), 51(b), 51(c), 51 Proviso, Order 21 Rule 37, Order 21 Rule 40**—Execution of money decree—Detention of judgment debtor—Court must record finding as to existence of circumstances stipulated in Clause (a) to (c) of proviso to Section 51, CPC.

IV (2006) BC 58 (AP HC)

— **Section 51(d), Order 40 Rule 1**—Appointment of Receiver—Receiver can be appointed by Court passing decree with all powers under Order 40 Rule 1, CPC in execution of decree—Once receiver appointed it has all powers conferred by Court for passing decree under Section 51(d), CPC—Court passing decree retains power and jurisdiction to execute said decree.

IV (2006) BC 34 (Bombay HC)

— **Section 60(1) Proviso (kc)**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Section 31—Attachment and sale of owner's/landlord's property *de hors* tenant's interest—Clause (kc) of proviso to Section 60(1), CPC is aimed at protecting tenant's rights and cannot be imagined to put embargo on owner's reversionary rights.

IV (2006) BC 41 (DRT—Mumbai) (DRAT/DRT)

— **Order 12 Rule 6**—Debts Recovery Tribunal (Procedure) Rules, 1993—Rule 12(5)—Judgment on Admission—Admission of debt—Provisions of Order 12 Rule 6, Civil Procedure Code *pari materia* with provisions of Rule 12(5) of Rules as regards object and intendment, which is expeditious adjudication of claim and recovery of debts due to Banks from borrowers.

IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

— **Order 21**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 20, 29, 30—Banking Regulation Act, 1949—Sections 21, 35(a)—Income-tax Act, 1961—Schedule II—Appeal against interlocutory order—Compromise proposal between creditor Bank and judgment debtor-borrower—Appellant auction purchaser is third party having no right to question about deal of compromise between decree holder-creditor Bank and judgment debtor-borrower—Compromise arrived at not on basis of OTS scheme and question of RBI guidelines do not arise—When auction purchaser has come into picture then his interest should also be protected as per provisions of Order 21, Civil Procedure Code and different provisions of II Schedule of Income-tax Act, acceptable under Section 29 of Debts Recovery Tribunals Act—No scope for Appellate Tribunal to enter into such matter—Present appeal is immatured one having no finalization being made till date towards acceptance of compromise and regarding validity or otherwise of auction sale by which appellant auction purchaser came into picture.

IV (2006) BC 79 (DRAT—Allahabad) (DRAT/DRT)

— **Order 21 Rule 21**—Simultaneous Execution—Proceedings against person as well as his property in process of execution of decree is almost rarity.

IV (2006) BC 58 (AP HC)

— **Order 34 Rule 4, Order 34 Rule 6**—Recovery of Loan Amount—Plea of fraud taken by defendants is void of any specific pleading and any cogent evidence in support thereof—Various documents produced and proved by plaintiff and even by defendant's documents subsequent to letter of offer of loan by lender, its acceptance by borrower as well as after execution of loan agreement, not even whisper made about fraud—It is mere after thought and without any substance.

IV (2006) BC 152 (Delhi HC)

— **Order 34 Rule 4, Order 34 Rule 6**—Recovery of Loan Amount—Interest—Concession—Suit for recovery of money by sale of mortgaged properties—Calculated interest demanded by plaintiff was accepted by defendants and they sent payment of Rs. 87,791.70 towards interest payable on loan advanced—Documents clearly show plaintiff at no point of time raised any protest with regard to rate of interest nor justified any circumstances under which plaintiff agreed to charge concessional rate which is not part of loan agreement—Once contract between parties particularly in relation to mortgaged property provides for rate of interest, Court has no jurisdiction to alter or vary said rate of interest even *pendente lite* and future.

IV (2006) BC 152 (Delhi HC)

— **Order 34 Rule 4, Order 34 Rule 6**—Recovery of Loan Amount—Concluded contract between parties by documents—Parties cannot question correctness or validity of these agreements and documents under which they availed benefits for all this period and loan disbursed in terms thereof—No substantive variation in terms of loan and loan agreement—They were complementary to each other and formed integral part to reschedule of payment—Plaintiff not committed any breach of terms of agreement between parties which is primarily attributable to defendants—Terms of agreement between parties clearly provided for charging of interest on loan amount @ 21.5% p.a. and also for additional interest @ 6% p.a. on defaulted amount—Plaintiff entitled to contractual rate of interest in mortgaged suit.

IV (2006) BC 152 (Delhi HC)

— **Order 37**—Leave to defend—Suit by bank for recovery of Rs. 4,85,250.40— Only cause of action against defendant based upon sole guarantee deed allegedly executed by defendant No. 3—Said deed witnessed by none—No explanation why guarantee executed to extent of Rs. 7,84,361.40 when transaction only for Rs. 3,17,804.40—Issues raised by defendant have merit—Application for leave to defend not based on fabricated or false documents or documents produced by defendant himself—Majorly documents in possession and power of plaintiff bank—Opportunity to prove his case by proper and cogent evidence to be given to defendant—Conditional leave to defend granted.

IV (2006) BC 7 (Delhi HC) (DB)

— **Order 37**—Leave to defend—Grant of—Wherever application for leave to defend raises or discloses triable issues and such application is *bona fide*, normally Court would grant leave to defend with or without any conditions depending upon facts and circumstances of each case.

IV (2006) BC 7 (Delhi HC) (DB)

— **Order 37, Order 37 Rule 3(5) r/w Section 151**—Leave to Defend—Recovery of Amount—Case of plaintiff is based upon written statement entered into between parties—Defendant No. 1 unequivocally acknowledged and accepted its liability—Defendant No. 1 defaulted in performance of said agreement—Defendant No. 1 required to take over supply of raw material from plaintiff on payment to plaintiff—Defendant No. 1 consistently failed to make said payments, resulting in huge outstandings *i.e.* sum of Rs. 26,88,133.78, which amount acknowledged by defendants by letter—Defendants themselves gave proposal to plaintiff for re-scheduling of payments due from them and nowhere denied agreement and deeds of guarantee—Defence sought to be set up by defendants not *bona fide*—Case of plaintiff is on sure footing—Agreement acknowledging and accepting debt not disputed by defendants—Defendants who are in breach of agreement liable to pay amount of Rs. 26,88,133.78 and interest @ 16% p.a.

IV (2006) BC 135 (Delhi HC)

— **Order 37 Rule 3**—Process of issue of summons—Application for leave to defend—Plaintiff to serve upon defendant summons for judgment giving him no less than ten days from date of service and defendant to apply for leave to defend within 10 days from service of such summons for judgment—Substituting of new Form No. 4 by High Court giving 30 days period at once instead of instalment of 10 days to defendant—Forms could not supersede rules—Forms are meant to give effect to rules—Amended form deleted by High Court after about 2½ years by notification in gazette—Order of lower Court pronouncing judgment on basis that issue of summons in substituted form proper, set aside—Matter remanded back to Trial Court for following procedure prescribed under Order 37 Rule 3 Civil

Procedure Code from stage of issuing summons for judgment.

IV (2006) BC 100 (Bombay HC)

— **Order 38 Rule 5, Order 38 Rule 6**—Attachment before judgment—Suit for realisation of amount together with interest future and *pendente lite* and cost—Order for attachment of property of respondent No. 3 regarding her mortgaged property—Respondent No. 3 alleged to have disposed of some portion of mortgaged properties and agreement to sell other properties within mortgaged properties—*Ex parte* order of attachment passed by Presiding Officer—Discretionary power of Court or Tribunal to pass attachment order under Order 38 Rules 5 and 6, Civil Procedure Code—That discretion becomes more stringent when property sought to be attached, already mortgaged in favour of Bank—By attachment, interest of party claiming, required to be protected and security created when property equitably mortgaged—Final adjudication stage arrived at in year 2002—Dilatory tactics are there from side of respondent and by such tactics, they could be successful in non-adjudicating case for last 13 years—Tribunal committed no error in passing conditional order regarding attachment in impugned order—Interference by this Court not necessary.

IV (2006) BC 10 (DRAT—Allahabad) (DRAT/DRT)

— **Order 39 Rules 1, 2; Order 7 Rule 10, Order 7 Rule 11**—Specific Relief Act, 1963—Section 34—Court Fees Act, 1870—Section 7(iv)(c)—Injunction—Rejection of Plaint—Suit for declaration simplicitor without seeking consequential relief—Appellant sought declaration and injunction (*ad interim*) restraining respondent from giving effect to that communication till disposal of suit—Rejection of suit sought on ground that relief of declaration without claiming any consequential relief barred under Section 34 of Specific Relief Act and payment of Court fee—Order of Single Judge directing appellant to amend plaint of their suit and include consequential relief in prayer clause cannot stand test of judicial scrutiny—Plaintiff is *dominus litus* and free to choose his remedy he wants in suit—It is not open to Court to import into plaint or to read into it any relief not asked for by party in order to levy higher Court fee—Impugned order of Single Judge set aside—Single Judge shall decide application under Order 39 Rules 1 and 2, CPC uninfluenced by any observation contained in order.

IV (2006) BC 108 (Delhi HC) (DB)

Companies Act, 1956

— Tender—Contract for construction of Paradip Refinery—Abysmal lack of commitment and abandonment of work—Show cause notice placing respondent on holiday list and debarring him from entering into new contracts and de-listing from list of approved vendors/contractors—Mere existence of reasons in show cause notice, or any material referred to in show cause notice, not sufficient—Reasons must be contained in order under challenge—Authority concerned must discuss explanation given in reply and give its reasons for holding explanation is not satisfactory—In present case, that has not been done—Impugned order in writ petition does not disclose any reason and it is bad in law.

IV (2006) BC 119 (Delhi HC) (DB)

— **Section 165(4)**—Balance sheet is not public document—Plea taken by appellants—In view of Section 165(4) of Act, statutory report has to be certified as correct by not less than two directors of company—Copy of statutory report certified to be true under Section 165(4) has to be delivered to Registrar of Companies for registration—When registered with Registrar of Companies it cannot be gainsaid it becomes public document.

IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

— **Section 439 r/w Sections 433(e), 443, 483**—Companies (Court) Rules, 1959—Rule 96—Winding up of Company—*Ex parte* proceedings—Notice before admission—Admission order cannot be passed as matter of routine and notice before admission should be issued to Company sought to be wound up—Notwithstanding discretion and fetterless powers of Company-Judge to pass appropriate orders at time of *ex parte* hearing of winding up petition, *ex parte* petition against respondent Company not called for—Not fit case where notice to show cause not required to be given to respondent Company—Order of single Judge set aside and matter sent back to Company Judge for consideration of Company petition afresh.

IV (2006) BC 51 (Rajasthan HC) (DB)

Companies (Court) Rules, 1959

— **Rule 96**—Companies Act, 1956—Section 439 r/w Sections 433(e), 443, 483—Winding up of Company—*Ex-parte* proceedings—Notice before admission—Admission order cannot be passed as matter of routine and notice before admission should be issued to Company sought to be wound up—Notwithstanding discretion and fetterless powers of Company-Judge to pass appropriate orders at time of *ex parte* hearing of winding up petition, *ex parte* petition against respondent Company not called for—Not fit case where notice to show cause not required to be given to respondent Company—Order of single Judge set aside and matter sent back to Company Judge for consideration of Company petition afresh.

IV (2006) BC 51 (Rajasthan HC) (DB)

Constitution of India, 1950

— **Article 226**—Writ Petition—*Locus standi*—Writ petition can only be filed by some one who is personally aggrieved.

IV (2006) BC 111 (Madras HC) (DB)

— **Article 226**—Writ Jurisdiction—Private companies not amenable to writ jurisdiction under Article 226, Constitution.

IV (2006) BC 111 (Madras HC) (DB)

— **Article 226**—Writ Petition—Maintainability—Writ petition filed against non-nationalized Bank and nominee Directors in Board of such Bank relating to transfer of certain shares in Bank—Writ petition not maintainable against private Bank—In normal functioning of private Banking company there is no participation or interference of State or its authorities—Regulations framed by Reserve Bank of India are by way of supervisory vigilance—These are purely commercial activities—Court does not get jurisdiction to hear writ petition merely because Reserve Bank of India arrayed as party.

IV (2006) BC 111 (Madras HC) (DB)

— **Article 226**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Section 13—One Time Settlement Scheme—Benefit of scheme to loans taken by petitioner—Injunction against respondent No. 2-Bank from taking further steps under Section 13 of Act—Benefits of Scheme came to end on 31.3.2003 as per RBI guidelines—When petitioner obtained loan, though in name of firm, it was indeed taken by partners of said firm—If RBI taken decision in public interest of depositors not to extend benefit to Directors, petitioner cannot obtain enforcement of said policy decision in writ jurisdiction—This Court can only interfere when there is violation of law—No writ could be issued against Bank to enforce them and accept proposal given by petitioner—Policy decisions taken in purported exercise of statutory power in public interest—Acting reasonably and in good faith not open to Court's interference.

IV (2006) BC 188 (Bombay HC) (DB)

— **Article 226**—Writ Jurisdiction—Powers under Article 226 should be sparingly used, where rights of person seriously infringed and no other adequate and specific remedy available to him—Exception to general rule is only in cases where writ applied for is Writ of *habeas corpus* or *quo warranto* or filed in public interest.

IV (2006) BC 111 (Madras HC) (DB)

— **Article 226**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 29, 30—Income Tax Act, 1961—Schedule Second Rule 11—Attachment or Sale of Property—Alternative Remedy—Existence of—Exercise of writ jurisdiction—Recovery Officer empowered to decide objection made to attachment or sale of property under Rule 11 of Rules in Second Schedule to Income-tax Act—In case of any adverse orders, petitioners could appeal to Debts Recovery Tribunal under Section 30 of Act—Exercise of jurisdiction under Article 226 of Constitution not justified to resolve disputed questions of fact when statutory remedy available under Act.

IV (2006) BC 130 (Kerala HC)

Contract Act, 1872

— **Sections 2(d), 25**—Limitation Act, 1963—Section 18—Repayment of Loan Amount—Acknowledgement of debt due—Debt incurred by person since deceased—Father of deceased not a guarantor for transaction—Undertaking by defendant-father acknowledging debt and to pay Bank loan amount on behalf of his son—He paid certain instalments after undertaking and thereafter became defaulter—He is estopped from denying such repayment—Acknowledgements made well within period of limitation—Undertaking given by father to pay loan incurred by son in good consideration to purchase peace for family and save estate of his son from attachment and sale in execution.

IV (2006) BC 180 (Karnataka HC)

— **Section 126**—“Contract of Guarantee”—Liability of appellant (3rd defendant) guarantor—State of Karnataka offered its guarantee for defendants and would be liable only when third person (defendants) commits default—Defendants are primarily liable—Guarantor’s liability is co-extensive with that of principal debtor—Liability of appellant to applicant Bank cannot be disputed—Nothing on record to show Deed of Guarantee executed by State of Karnataka in favour of applicant Bank—Borrower stands discharged and appellant not at all liable to any extent.

IV (2006) BC 13 (DRAT—Chennai) (DRAT/DRT)

— **Section 126**—Money decree—Could be satisfied only when money is paid and if it is paid out of Court, same to be certified by decree-holder—If decree-holder fails to certify payment, and fails to show cause why payment or adjustment should not be recorded, as certified, Court shall record same accordingly—Till this is done, decree would be alive or decree may be set aside only by competent Court—Nothing on record to show decree passed by Civil Court set aside by competent Court—Appellant not absolved from his liability by execution of deed of guarantee by State of Karnataka—Deed of Guarantee only would be additional surety or guarantee and not only surety in place of appellant—As appellant is only LR of 3rd defendant, and could not be subject to any personal liability and estate of 3rd defendant-deceased, available in hands of appellant alone, could be proceeded with—No valid ground to interfere with orders passed by DRT.

IV (2006) BC 13 (DRAT—Chennai) (DRAT/DRT)

— **Sections 172, 173, 174, 175, 176**—Hypothecation loan account converted to pledge account—Pledged goods in possession of pledgee Bank—Suit for recovery of debt not maintainable by pledgee till they retain pledged property—Pledged goods were in possession of Bank as it was under lock and key of Bank itself—There was theft twice and matter reported to Bank again and again from side of respondent-company and request for sale of pledged goods to liquidate their debt—Bank took no action on it or if any action taken, not stated by Bank officials specifically in evidence or in plaint—When hypothecation account converted to pledged account, question of mortgagor and mortgagee does not come into play—Legally claim of Bank not maintainable—No purpose will be served in remanding case to Tribunal even if there were any laches on part of Bank or P.O. in not giving proper opportunity to appellant Bank.

IV (2006) BC 53 (DRAT—Allahabad) (DRAT/DRT)

Court Fees Act, 1870

— **Section 7(iv)(c)**—Civil Procedure Code, 1908—Order 39 Rules 1, 2; Order 7 Rule 10, Order 7 Rule 11—Specific Relief Act, 1963—Section 34—Injunction—Rejection of Plaint—Suit for declaration simplicitor without seeking consequential relief—Appellant sought declaration and injunction (*ad interim*) restraining respondent from giving effect to that communication till disposal of suit—Rejection of suit sought on ground that relief of declaration without claiming any consequential relief barred under Section 34 of Specific Relief Act and payment of Court fee—Order of Single Judge directing appellant to amend plaint of their suit and include consequential relief in prayer clause cannot stand test of judicial scrutiny—Plaintiff is *dominus litus* and free to choose his remedy he wants in suit—It is not open to Court to import into plaint or to read into it any relief not asked for by party in order to levy higher Court fee—Impugned order of Single Judge set aside—Single Judge shall decide application

under Order 39 Rules 1 and 2, CPC uninfluenced by any observation contained in order.

IV (2006) BC 108 (Delhi HC) (DB)

Criminal Procedure Code, 1973

— **Section 2(d)**—‘Complaint’—Verbatim reproduction of all ingredients of offence alleged by complainant not necessary.

IV (2006) BC 91 (Karnataka HC)

— **Sections 219, 220**—Negotiable Instruments Act, 1881—Section 138—Joint Trial—Dishonour of Cheque—Rule is for every distinct offence there should be separate charge and every such charge should be tried separately—True the Magistrate may try together all or any number of charges framed against accused, if he so desire, and also if Magistrate is of opinion accused not likely to be prejudiced by such course of action—But that does not mean two cases involving offence under Section 138 of Act prosecuted by two different complainants arising from separate causes of action can be tried together only for reason that accused person is same—It is inconceivable as to how common accused in two complaints filed by two different complainants *albeit* alleging commission of same offence (Section 138, N.I. Act), under different circumstances, can seek benefit of Section 219 or 220, Criminal Procedure Code—Documents in two cases to be marked separately and merit of two cases to be evaluated separately—It may be true that offence in two cases is of same kind—Common factor is only petitioner is accused in two cases—Magistrate justified in dismissing applications.

IV (2006) BC 177 (Kerala HC)

— **Section 389**—Negotiable Instruments Act, 1881—Section 138—Suspension of Sentence Pending Appeal—Imposition of conditions—Legality—Dishonour of Cheque—Though Appellate Court is empowered to impose condition for suspension of execution of sentence, while admitting appeal, condition shall be reasonable and commensurate with or proportionate with sentence imposed—Scope of provision of discretion of Appellate Court to exercise power discussed.

IV (2006) BC 147 (Kerala HC)

— **Section 482**—Negotiable Instruments Act, 1881—Sections 138, 139—Dishonour of Cheque—Cheque issued by firm—Question whether petitioner-partner is actively involved in day-to-day affairs of business of firm or not, Purely question of fact, which cannot be decided in this petition under Section 482 Criminal Procedure Code—This question shall have to be decided based on material to be collected during course of trial.

IV (2006) BC 91 (Karnataka HC)

— **Sections 482, 2(d)**—Negotiable Instruments Act, 1881—Section 138—Indian Penal Code, 1860—Section 420—Dishonour of Cheque, Cheating—Mere omission to mention any or more penal sections in FIR would not *ipso facto* deter concerned Court to proceed further for concerned offences—It is always open to Court to frame charges for different offences other than and in addition to offences mentioned in FIR—Criminal proceedings cannot be scuttled on that technical issue.

IV (2006) BC 91 (Karnataka HC)

Debts Recovery Tribunal (Procedure) Rules, 1993

— **Rule 12(5)**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 19(20)—Evidence Act, 1872—Sections 18 to 21—Recovery Certificate—Issuance of—Respondent Bank made out case for issuance of recovery certificate on basis of admission given by defendants in balance sheet, produced in Court through affidavit of Bank’s officer—Term ‘defendant’ only connotes that admission must be of ‘defendant’ even if made before filing of proceedings, as distinguished from admission of third party, who is not party to proceedings, though admissible under Sections 18 to 21 of Evidence Act—Respondent Bank relied on figure in balance sheet admitted to be due from appellants to Bank—Same proved through affidavit evidence given by Bank but not denied by appellants in reply affidavit.

IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

— **Rule 12(5)**—Civil Procedure Code, 1908—Order 12 Rule 6—Judgment on Admission—Admission of debt—Provisions of Order 12 Rule 6, Civil Procedure Code *pari materia* with provisions of Rule 12(5)

of Rules as regards object and intendment, which is expeditious adjudication of claim and recovery of debts due to Banks from borrowers.

IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

— **Rule 12(5), 12(6), 12(7)**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Cross-examination of Bank’s witness—No grounds made out by appellant—Application made to prolong litigation—Contents of affidavit filed by respondent Bank are based on notification, whereby former Bank from whom appellants took loan amalgamated with respondent-Bank, which is matter of record, no necessity of cross-examination of Bank’s witness on that point arises—As per Rule 12(7) of Rules, officer stated in claim affidavit that he is able to depose to facts of case from record available with applicant-Bank with which he is conversant—Further plea that appellants want to cross-examine officer regarding blanks filled up in documents by Bank, which were not filled up by borrowers or appellants—Considering scheme of Recovery of Debts Due to Banks and Financial Institution Act and Rules, party cannot be allowed to cross-examine witness just to grope in dark—Further plea to cross-examine is regarding collection of rent in respect of machineries belonging to borrower company, hypothecated to Bank—Receiver appointed in respect of hypothecated goods by High Court in original suit, later on transferred to DRT—Hypothecated goods are not in possession of Bank—Appellants could not point out any inconsistent term which would not make appellants primarily liable for debt of main borrower—Provisions of Section 141 of Contract Act not attracted.

IV (2006) BC 72 (DRAT—Mumbai) (DRAT/DRT)

Evidence Act, 1872

— **Sections 17, 18**—“Admission”—Meaning of terms—Sections 17 and 18 do not restrict meaning of word ‘admission’ to statement made during proceeding in Court nor to statement made by party to proceeding.

IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 18 to 21**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 19(20)—Debts Recovery Tribunal (Procedure) Rules, 1993—Rule 12(5)—Recovery Certificate—Issuance of—Respondent Bank made out case for issuance of recovery certificate on basis of admission given by defendants in balance sheet, produced in Court through affidavit of Bank’s officer—Term ‘defendant’ only connotes that admission must be of ‘defendant’ even if made before filing of proceedings, as distinguished from admission of third party, who is not party to proceedings, though admissible under Sections 18 to 21 of Evidence Act—Respondent Bank relied on figure in balance sheet admitted to be due from appellants to Bank—Same proved through affidavit evidence given by Bank but not denied by appellants in reply affidavit.

IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 19, 20, 21**—“Admission”—Relevancy and admissibility in evidence—Discussed.

IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 63, 65**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Secondary evidence of security documents through typed copies—Application filed for production by Bank and allowed by Tribunal—Respondent No. 1-Bank not stated as to how and since when all original documents were missing and what steps were taken to search those documents—Typed copies not compared with originals by Senior Manager or any officer of Bank—In absence of said endorsement and various contradictions, every reason for not believing statement on oath made by Senior Manager—Ingredients of provisions of Sections 63 and 65 of Evidence Act not fulfilled on behalf of respondent No. 1 Bank to produce secondary evidence—It would certainly have made some difference if respondent Bank sought to produce photo-copies as stated in application but they wanted to produce by way of secondary evidence only typed copies allegedly compared by Senior Manager of Bank at time of filing of suit in High Court, which is again contradicted—No warrant for allowing application made on behalf of respondent Bank.

IV (2006) BC 65 (DRAT—Mumbai) (DRAT/DRT)

— **Sections 63, 65(c)**—Secondary Evidence—Admissibility—Permitted to be led by parties in certain

contingencies if originals are not available for production in Court—Respondent-Bank relying on Clause (c) of Section 65 which is applicable when original destroyed or lost or when party offering evidence of its contents cannot, for any other reason not arising from his own default or produce it in reasonable time.

IV (2006) BC 65 (DRAT—Mumbai) (DRAT/DRT)

Income Tax Act, 1961

— **Rule 11 Schedule Second**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 29, 30—Constitution of India, 1950—Article 226—Attachment or Sale of Property—Alternative Remedy—Existence of—Exercise of writ jurisdiction—Recovery Officer empowered to decide objection made to attachment or sale of property under Rule 11 of Rules in Second Schedule to Income-tax Act—In case of any adverse orders, petitioners could appeal to Debts Recovery Tribunal under Section 30 of Act—Exercise of jurisdiction under Article 226 of Constitution not justified to resolve disputed questions of fact when statutory remedy available under Act.

IV (2006) BC 130 (Kerala HC)

— **Schedule Second**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 20, 29, 30—Banking Regulation Act, 1949—Sections 21, 35(a)—Civil Procedure Code, 1908—Order 21—Appeal against interlocutory order—Compromise proposal between creditor Bank and judgment debtor-borrower—Appellant auction purchaser is third party having no right to question about deal of compromise between decree holder-creditor Bank and judgment debtor-borrower—Compromise arrived at not on basis of OTS scheme and question of RBI guidelines do not arise—When auction purchaser has come into picture then his interest should also be protected as per provisions of Order 21, Civil Procedure Code and different provisions of II Schedule of Income-tax Act, acceptable under Section 29 of Debts Recovery Tribunals Act—No scope for Appellate Tribunal to enter into such matter—Present appeal is immatured one having no finalization being made till date towards acceptance of compromise and regarding validity or otherwise of auction sale by which appellant auction purchaser came into picture.

IV (2006) BC 79 (DRAT—Allahabad) (DRAT/DRT)

Indian Penal Code, 1860

— **Section 420**—Negotiable Instruments Act, 1881—Section 138—Criminal Procedure Code, 1973—Sections 482, 2(d)—Dishonour of Cheque, Cheating—Mere omission to mention any or more penal sections in FIR would not *ipso facto* deter concerned Court to proceed further for concerned offences—It is always open to Court to frame charges for different offences other than and in addition to offences mentioned in FIR—Criminal proceedings cannot be scuttled on that technical issue.

IV (2006) BC 91 (Karnataka HC)

Indira Vikas Patra Rules, 1986

— **Rule 10**—Loss of Indira Vikas Patra will not disentitle depositor of his money on maturity—Post Office does not maintain names of purchasers of Indira Vikas Patra and Post Office bound to pay maturity value of Indira Vikas Patras to person who presents same after date of maturity.

IV (2006) BC 86 (Kerala HC) (DB)

Limitation Act, 1963

— **Section 18**—Acknowledgement of debt due—Acknowledgement executed within subsistence of period of limitation—It creates fresh period of limitation from date of acknowledgement—Question of acknowledgement being time-barred, does not arise.

IV (2006) BC 180 (Karnataka HC)

— **Section 18**—Contract Act, 1872—Sections 2(d), 25—Repayment of Loan Amount—Acknowledgement of debt due—Debt incurred by person since deceased—Father of deceased not a guarantor for transaction—Undertaking by defendant-father acknowledging debt and to pay Bank loan amount on behalf of his son—He paid certain instalments after undertaking and thereafter became defaulter—He is

estopped from denying such repayment—Acknowledgements made well within period of limitation—Undertaking given by father to pay loan incurred by son in good consideration to purchase peace for family and save estate of his son from attachment and sale in execution.

IV (2006) BC 180 (Karnataka HC)

Negotiable Instruments Act, 1881

— **Section 4**—Pronote—Sending to handwriting expert for comparison with regard to age of ink in signature and body of pronote—Plea raised by revision petition that signatures obtained in blank pronotes when he borrowed vehicle loan due to disputes with managing partner—Purpose for which revision petitioner as defendant intends to send pronote to expert not foreign or irrelevant to questions in controversy, Court expected to decide while deciding suit—Learned Judge not exercised discretion properly, observing no purpose would be served by sending suit document pronote in question, to handwriting expert for comparison and that application not maintainable—Impugned order set aside.

IV (2006) BC 106 (AP HC)

— **Sections 135, 138, 142**—Mandate holder—Liability—Dishonour of Cheque—Cognizance of offence—‘Mandate holder’ is not drawer of cheque in real sense as understood under Section 138 of Act—He is not account holder, though authorised signatory on behalf of account holder—Case not filed against account holder in whose account cheque was drawn—Complaint ought to have been filed against owner or proprietor of firm, in whose account cheque was drawn—Trial Court erroneously held case not bad for non-joinder of owner of firm/Company—Findings of Trial Court set aside—Case itself not maintainable—No question of conviction arises.

IV (2006) BC 54 (Madras HC)

— **Sections 135, 138, 142**—Dishonour of Cheque—Cognizance of offence—Change of signature by accused will not absolve him from his liability—Even after changing his name for some other purpose, he might have continued practice of signing his name as C. Subramaniam—There is promissory note followed by cheque—Highly improbable to conclude these two documents must have been forged or concocted for purpose of case—Finding of Trial Court that prosecution failed to prove issuance of cheque not acceptable to this Court.

IV (2006) BC 54 (Madras HC)

— **Section 138**—Dishonour of Cheque—Service of Notice—Sent under certificate of posting also would be valid statutory notice—Section 138 of Act does not mandate notice under Section 138 of Act has to be sent only by registered post.

IV (2006) BC 84 (AP HC)

— **Section 138**—Indian Penal Code, 1860—Section 420—Criminal Procedure Code, 1973—Sections 482, 2(d)—Dishonour of Cheque, Cheating—Mere omission to mention any or more penal sections in FIR would not *ipso facto* deter concerned Court to proceed further for concerned offences—It is always open to Court to frame charges for different offences other than and in addition to offences mentioned in FIR—Criminal proceedings cannot be scuttled on that technical issue.

IV (2006) BC 91 (Karnataka HC)

— **Section 138**—Dishonour of Cheque—Suspension of sentence during pendency of revision—Accused awarded one year RI and fine of Rs. 5,000/- Fine amount already deposited and petitioner lodged in jail for past 1 month and 10 days—Jail sentence of accused suspended during pendency of revision and released on bail with conditions.

IV (2006) BC 99 (P&H HC)

— **Section 138**—Criminal Procedure Code, 1973—Sections 219, 220—Joint Trial—Dishonour of Cheque—Rule is for every distinct offence there should be separate charge and every such charge should be tried separately—True the Magistrate may try together all or any number of charges framed against accused, if he so desire, and also if Magistrate is of opinion accused not likely to be prejudiced by such course of action—But that does not mean two cases involving offence under Section 138 of Act prosecuted by two different complainants arising from separate causes of action can be tried together only for reason that accused person is same—It is inconceivable as to how common accused in two

complaints filed by two different complainants *albeit* alleging commission of same offence (Section 138, N.I. Act), under different circumstances, can seek benefit of Section 219 or 220, Criminal Procedure Code—Documents in two cases to be marked separately and merit of two cases to be evaluated separately—It may be true that offence in two cases is of same kind—Common factor is only petitioner is accused in two cases—Magistrate justified in dismissing applications.

IV (2006) BC 177 (Kerala HC)

— **Section 138**—Dishonour of Cheque—Territorial jurisdiction—Account payee cheque issued by drawer—Court where payee's Bank situated has jurisdiction to entertain suit—In view of issue of account payee cheque, it is clear drawer desires to pay amount through Bank which keeps account of payee.

IV (2006) BC 104 (Kerala HC) (DB)

— **Section 138**—Criminal Procedure Code, 1973—Section 389—Suspension of Sentence Pending Appeal—Imposition of conditions—Legality—Dishonour of Cheque—Though Appellate Court is empowered to impose condition for suspension of execution of sentence, while admitting appeal, condition shall be reasonable and commensurate with or proportionate with sentence imposed—Scope of provision of discretion of Appellate Court to exercise power discussed.

IV (2006) BC 147 (Kerala HC)

— **Section 138, Explanation**—Dishonour of Cheque—Legally enforceable debt or liability—Goods purchased on credit—On date of issuance of cheque, same not issued in discharge of legally enforceable debt—Accused also issued cheque in question alongwith six other cheques as advance for prompt payment of credit purchase, if any—Accused not liable as cheque issued in advance when there was no legally enforceable debt.

IV (2006) BC 80 (AP HC)

— **Sections 138, 139**—Criminal Procedure Code, 1973—Section 482—Dishonour of Cheque—Cheque issued by firm—Question whether petitioner-partner is actively involved in day-to-day affairs of business of firm or not, purely question of fact, which cannot be decided in this petition under Section 482 Criminal Procedure Code—This question shall have to be decided based on material to be collected during course of trial.

IV (2006) BC 91 (Karnataka HC)

— **Sections 138, 139**—Criminal Procedure Code, 1973—Section 482—Dishonour of Cheque—Presumption—Alteration in signatures on cheques—Burden of proof on accused that alteration in dates or signatures made not because of insufficiency or paucity of funds—If burden not discharged by accused offence of dishonour of cheque could still be made out and proceedings cannot be quashed.

IV (2006) BC 91 (Karnataka HC)

Provincial Small Cause Court Act

— **Section 9** r/w Section 115, Civil Procedure Code, 1908—Revision—Recovery Suit—Oral evidence adduced by plaintiff not believed by Trial Court—Case set up by plaintiff appears to be unnatural and false—All these findings of Trial Court are findings of fact and revisional Court cannot interfere said findings capable of being recorded by any Small Cause Court.

IV (2006) BC 19 (MP HC)

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

— Amendment of memo of appeal—Discretion of appellate Court—Plea taken by Bank that they should be given further opportunity to establish their case by giving more evidence and if necessary to cross-examine witnesses of borrower—No ground to reject such amendment, although filed belatedly—It is appellate Court's discretion to give further opportunity to appellant, as filing of replication, cross-examination of defence witnesses for purpose to remand case for fresh disposal, if circumstances arise so.

IV (2006) BC 53 (DRAT—Allahabad) (DRAT/DRT)

— Cross-examination of Bank's witness—No grounds made out by appellant—Application made to prolong litigation—Contents of affidavit filed by respondent Bank are based on notification, whereby former Bank from whom appellants took loan amalgamated with respondent-Bank, which is matter of record, no necessity of cross-examination of Bank's witness on that point arises—As per Rule 12(7) of Rules, officer stated in claim affidavit that he is able to depose to facts of case from record available with applicant-Bank with which he is conversant—Further plea that appellants want to cross-examine officer regarding blanks filled up in documents by Bank, which were not filled up by borrowers or appellants—Considering scheme of Recovery of Debts Due to Banks and Financial Institution Act and Rules, party cannot be allowed to cross-examine witness just to grope in dark—Further plea to cross-examine is regarding collection of rent in respect of machineries belonging to borrower company, hypothecated to Bank—Receiver appointed in respect of hypothecated goods by High Court in original suit, later on transferred to DRT—Hypothecated goods are not in possession of Bank—Appellants could not point out any inconsistent term which would not make appellants primarily liable for debt of main borrower—Provisions of Section 141 of Contract Act not attracted.

IV (2006) BC 72 (DRAT—Mumbai) (DRAT/DRT)

— Secondary evidence of security documents through typed copies—Application filed for production by Bank and allowed by Tribunal—Respondent No. 1-Bank not stated as to how and since when all original documents were missing and what steps were taken to search those documents—Typed copies not compared with originals by Senior Manager or any officer of Bank—In absence of said endorsement and various contradictions, every reason for not believing statement on oath made by Senior Manager—Ingredients of provisions of Sections 63 and 65 of Evidence Act not fulfilled on behalf of respondent No. 1 Bank to produce secondary evidence—It would certainly have made some difference if respondent Bank sought to produce photo-copies as stated in application but they wanted to produce by way of secondary evidence only typed copies allegedly compared by Senior Manager of Bank at time of filing of suit in High Court, which is again contradicted—No warrant for allowing application made on behalf of respondent Bank.

IV (2006) BC 65 (DRAT—Mumbai) (DRAT/DRT)

— **Section 2(g)**—"Debt"—Return of cheque for insufficient funds—Liability of defendant-Banks—Definition of debt is comprehensive and includes any liability arising during course of business activity undertaken by Bank—Liability claimed by applicant Bank surely meets that test—Applicant Bank castigated both defendants for fiasco by contending they were negligent—Negligence attributed to defendant No. 2 is in not cancelling stamps on cheque while returning dishonoured cheque to G.B. and Co.—Alleged negligence of 1st defendant is in not ensuring that 2nd defendant's stamps on cheque were cancelled and in failing to affix its encoding on reverse of cheque—Best evidence is cheque itself in original—Same not available—Applicant Bank not shown prudence of preserving cheque when everything revolved on it—Since there is clearly stamp of 1st defendant on cheque, non-cancellation of stamps of 2nd defendant paled into insignificance—Applicant Bank ought to have known from 1st defendant's stamp on same that it had come to it from 1st defendant—1st defendant not in anyway negligent—Applicant Bank at time of collecting cheque in clearing house should have refused to accept same on face of stamps of defendant No. 2—Had applicant vigilant, it would not have wrongly returned cheque to 2nd defendant and resultant loss would not have been caused—Attempt to shift liability on defendants unsustainable—Applicant liable to be non-suited.

IV (2006) BC 23 (DRT—Mumbai) (DRAT/DRT)

— **Sections 2(g), 19**—Suit for recovery of amount together with *pendente lite* and future interest—Bank tried to prove its claim on basis of its oral and documentary evidence—Amount claimed in claim arises out of liability incurred during ordinary course of banking business activity—Defendants utilized funds released by Bank through current account without there being any credit balances—Even defendants acknowledged liability after fraud detected and also made part payment towards dues outstanding—Acknowledged amount and cheques produced duly certified under Banker's Books Evidence Act—Claim proved to be filed by authorized and competent person—Admission by defendant No. 4 of his liability makes his liability co-extensive with that of defendant Nos. 1 to 3 and 6—Defendant Nos. 2

and 3 acknowledged debt and on account of their admission, their liability established—Claim of applicant Bank very much within limitation from date of acknowledgement—No extraordinary circumstances to justify reduction of rate of interest from 21.75% p.a. with quarterly rest.

IV (2006) BC 48 (DRT—Delhi) (DRAT/DRT)

— **Sections 17, 18, 34**—Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992—Sections 3(3), 9A, 9A(iii), 13, 25—Property of person notified under Special Courts Act cannot be sold in execution of certificate obtained under provisions of RDDBFI Act—Certificate against such properties cannot be executed by Recovery Officer under DRT Act—Financial Institution will have to move Special Court in respect of attached property.

IV (2006) BC 1 (Bombay HC) (DB)

— **Section 19**—Civil Procedure Code, 1908—Section 34—Suit for recovery of amount with *pendente lite* and future interest—Grant of C.C. (Hypothecation) Facility, Inland Letter of Credit Facility, Bills Discounting Facility, Cash Credit (Pledge) Facility in favour of defendant No. 1—Execution of loan security documents and guarantee deeds with duly registered mortgage deed —Various pleas taken by defendants are sham and afterthought—Defendants signed documents after going through contents thereof—Defendant Nos. 1 to 5 availed facilities and financial discipline not maintained by defendants—No reason to disbelieve evidence led by applicant Bank because same filed by way of affidavits of its officials based on documents—No vested interest involved for them to depose falsely—Applicant Bank succeeded in proving its claim against defendant Nos. 1 to 5—Globally and domestically, rates of interest are falling down drastically—Interest of justice will be served if *pendente lite* and future interest awarded @ 10% p.a.—Directions issued accordingly.

IV (2006) BC 27 (DRT—Delhi) (DRAT/DRT)

— **Section 19(20)**—Debts Recovery Tribunal (Procedure) Rules, 1993—Rule 12(5)—Evidence Act, 1872—Sections 18 to 21—Recovery Certificate—Issuance of—Respondent Bank made out case for issuance of recovery certificate on basis of admission given by defendants in balance sheet, produced in Court through affidavit of Bank's officer—Term 'defendant' only connotes that admission must be of 'defendant' even if made before filing of proceedings, as distinguished from admission of third party, who is not party to proceedings, though admissible under Sections 18 to 21 of Evidence Act—Respondent Bank relied on figure in balance sheet admitted to be due from appellants to Bank—Same proved through affidavit evidence given by Bank but not denied by appellants in reply affidavit.

IV (2006) BC 57 (DRAT—Mumbai) (DRAT/DRT)

— **Section 19(25)**—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Section 13(2)—Recovery of Debts—Suit filed under RDDBFI Act pending—Notice under Section 13(2) SRFAESI Act issued by Bank during pendency of O.A.—Parallel proceedings under both Acts—Permission of Tribunal required for withdrawing application pending before it—No action can be taken under SRFAESI Act without such permission—No permission sought from Tribunal for withdrawal of any application pending—Lack of knowledge in matter of current legal principles not appreciable—Notice of Bank invalid being unsustainable.

IV (2006) BC 4 (DRT—Allahabad) (DRAT/DRT)

— **Section 19(25)**—Sick Industrial Companies (Special Provisions) Act, 1985—Section 22(1)—Suspension of legal proceedings, contracts—Protection under Section 22(1) of SICA given only to industrial company, *i.e.* principal borrower and not to guarantor—Appellant is industrial company, already declared as sick company—Entire proceedings have come to halt—No proceedings could be proceeded with except with consent of BIFR—Order passed by DRT liable to be set aside.

IV (2006) BC 7 (DRAT—Chennai) (DRAT/DRT)

— **Sections 20, 29, 30**—Banking Regulation Act, 1949—Sections 21, 35(a)—Civil Procedure Code, 1908—Order 21—Income-tax Act, 1961—Schedule II—Appeal against interlocutory order—Compromise proposal between creditor Bank and judgment debtor-borrower—Appellant auction purchaser is third party having no right to question about deal of compromise between decree holder-creditor Bank and judgment debtor-borrower—Compromise arrived at not on basis of OTS scheme and

question of RBI guidelines do not arise—When auction purchaser has come into picture then his interest should also be protected as per provisions of Order 21, Civil Procedure Code and different provisions of II Schedule of Income-tax Act, acceptable under Section 29 of Debts Recovery Tribunals Act—No scope for Appellate Tribunal to enter into such matter—Present appeal is immatured one having no finalization being made till date towards acceptance of compromise and regarding validity or otherwise of auction sale by which appellant auction purchaser came into picture.

IV (2006) BC 79 (DRAT—Allahabad) (DRAT/DRT)

— **Section 21**—Deposit of amounts to debt due, on filing appeal—Pre-deposit of less than 75% of amount as was required under Act—Stay of recovery proceedings without admitting appeal—Tribunal considered facts and circumstances of case before arriving at conclusion whether sum of Rs. 30 lacs sufficient security for compliance of Section 21 of Act—Tribunal aware of fact that entire decretal amount is lying secured with petitioner and deposit of Rs. 30 lacs is over and above security already lying with Bank—Tribunal considered financial position of respondent as also merits of grounds of appeal while arriving at its conclusion—No reason for this Court under Article 227 to substitute its own opinion for that of Appellate Tribunal when no glaring jurisdictional error or miscarriage of justice occurred.

IV (2006) BC 102 (Delhi HC)

— **Section 22(2)(g)**—Setting aside *ex parte* judgment—Restoration of petition—Deposit of amount as pre-condition—Presumption of service of registered notice—From records of original application it appears deemed service accepted by Registrar and PO of DRT on ground that defendants refused to accept notices, but there is no document nor any evidence against regarding such refusal—Rebuttable presumption of service on proper and correct address was not ground when deemed service was made in proceedings of original application, rather deemed service made on ground of refusal—Benefit goes in favour of appellant-defendants that they had not received notice—Deemed service as held by PO, improper on face of it—Appellants entitled to seek justice in reopening case and being fought inter parties—Case is of 1998 and almost decade passed and matter comes to nascent stage when revival of case allowed—Public money involved should be taken care of in circumstances—Restoration petition filed by appellants allowed on pre-condition of deposit of Rs. 5.00 lacs with respondent-Bank within 2 months from date in question.

IV (2006) BC 69 (DRAT—Allahabad) (DRAT/DRT)

— **Section 22(2)(g)**—Notice—Service of—Presumption—If registered notice sent in proper and correct address and acknowledgement does not come back within 30 days, Tribunal/Court are at liberty to take presumption that notice served—Such presumption always rebuttable presumption as defendants can rebut such presumption by proper documents or evidence.

IV (2006) BC 69 (DRAT—Allahabad) (DRAT/DRT)

— **Sections 29, 30**—Income Tax Act, 1961—Schedule Second Rule 11—Constitution of India, 1950—Article 226—Attachment or Sale of Property—Alternative Remedy—Existence of—Exercise of writ jurisdiction—Recovery Officer empowered to decide objection made to attachment or sale of property under Rule 11 of Rules in Second Schedule to Income-tax Act—In case of any adverse orders, petitioners could appeal to Debts Recovery Tribunal under Section 30 of Act—Exercise of jurisdiction under Article 226 of Constitution not justified to resolve disputed questions of fact when statutory remedy available under Act.

IV (2006) BC 130 (Kerala HC)

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

— **Sections 2(1)(f), 13(2)**—“Borrower”—Meaning of term—Notice under Section 13(2) of Act can be issued only after account of borrower classified as NPA—Person covered by particular item of word “Borrower” in Section 2(1)(f) may not necessarily be same for purpose of Section 13(2)—Borrower in Section 13(2) of Act could be one having account with Bank—Contention of applicant that “Borrower” in Section 2(1)(f) should be same in Section 13(2) of Act not accepted.

IV (2006) BC 41 (DRT—Mumbai) (DRAT/DRT)

— **Section 13**—Constitution of India, 1950—Article 226—One Time Settlement Scheme—Benefit of scheme to loans taken by petitioner—Injunction against respondent No. 2—Bank from taking further steps under Section 13 of Act—Benefits of Scheme came to end on 31.3.2003 as per RBI guidelines—When petitioner obtained loan, though in name of firm, it was indeed taken by partners of said firm—If RBI taken decision in public interest of depositors not to extend benefit to Directors, petitioner cannot obtain enforcement of said policy decision in writ jurisdiction—This Court can only interfere when there is violation of law—No writ could be issued against Bank to enforce them and accept proposal given by petitioner—Policy decisions taken in purported exercise of statutory power in public interest—Acting reasonably and in good faith not open to Court's interference.

IV (2006) BC 188 (Bombay HC) (DB)

— **Section 13(2)**—Notice—Legality—NPA Account—One should not be required to do forensic examination and analysis of notice of statutory notice for finding whether classification of account as NPA was proper—Bank did not bother to send chart with notice under Section 13(2) of Act to borrower giving details as to how account was classified as NPA—Impugned notice under Section 13(2) being omnibus is bad in law—Action of Bank under Act illegal and unsustainable against applicants.

IV (2006) BC 41 (DRT—Mumbai) (DRAT/DRT)

— **Section 13(2)**—NPA Account—Classification—Justification—Doctrine of Issue Estoppel—Tribunal gave liberty for removal of doubt in minds of parties to effect that account could never be classified as NPA—By said clarification, Tribunal did not allow reopening and reargitation of issue of classification of account as NPA on same set of facts—Doctrine of Issue Estoppel also prevents that course being followed—Bank could not have classified account as NPA on same set of facts on 30.11.2003 and issued notice under Section 13(2) of Act.

IV (2006) BC 41 (DRT—Mumbai) (DRAT/DRT)

— **Section 13(2)**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 19(25)—Recovery of Debts—Suit filed under RDBFI Act pending—Notice under Section 13(2) SRFAESI Act issued by Bank during pendency of O.A.—Parallel proceedings under both Acts—Permission of Tribunal required for withdrawing application pending before it—No action can be taken under SRFAESI Act without such permission—No permission sought from Tribunal for withdrawal of any application pending—Lack of knowledge in matter of current legal principles not appreciable—Notice of Bank invalid being unsustainable.

IV (2006) BC 4 (DRT—Allahabad) (DRAT/DRT)

— **Sections 13(2), 13(4)**—Waiver and abandonment—Applicant averred in clear terms that after his payment of Rs. 1.17 lacs account became performing asset and applicant re-delivered possession and abandoned and waived rights available to it under Act—Respondent chose not to deal with this averment and admitted contents thereof—It is assumed theory of waiver and abandonment of rights available to respondent in Act is correct.

IV (2006) BC 1 (DRT—Pune) (DRAT/DRT)

— **Sections 13(2), 13(4)**—Waiver and Abandonment—Bank not deprived from taking action under Act for all times—Waiver and abandonment is of right available under particular notice—Respondent Bank not prevented from resorting to Act, if after re-delivery of possession account again becomes NPA and respondent Bank follows necessary and relevant procedure—Notice vague and gives impression as if it is continuation of first notice—Respondent's right under first notice had come to end—Resort to provisions of Act by way of continuation of first notice not legal—Taking symbolic possession is also not legal.

IV (2006) BC 1 (DRT—Pune) (DRAT/DRT)

— **Sections 13(2), 13(4), 17**—Limitation—Notice of Possession—Circumstances on record are in favour of applicant's case—Fact that notice was published in newspapers dated 1.11.2005, is clear indication of fact that notice itself given on or about said date—Respondent Bank not tried to explain why notice

published after more than three months of service—It is believed notice served on 1.11.2005 from which time application filed within limitation.

IV (2006) BC 1 (DRT—Pune) (DRAT/DRT)

— **Sections 13(4), 17**—Non Performing Account—One Time Settlement—Petitioner defaulted in making payment—Recovery proceedings initiated—Account of petitioner declared NPA—Petitioner seeks direction to pursue claim towards foreign bills of ECGC but same rejected not only once but in second instance also said claim rejected—Question of regularising and upgrading of account does not arise as petitioner failed to take advantage of OTS as he failed to deposit amount as demanded after deposit of Rs. 2 lacs—Petitioner has right to approach DRT after recovery measure is taken—Writ Petition involves several disputed question which cannot be decided by this Court while exercising power under Article 226 of Constitution.

IV (2006) BC 193 (Rajasthan HC)

— **Sections 17, 13(2), 13(4)**—Equitable Mortgage—Creation of—Not necessary to deposit all or most material documents of title—But documents deposited should show *prima facie* title deed to property in depositor and not enough that documents should relate to title to property—Agreement of sale also not deposited much less with assurance that original after receiving from Registrar of assurances would go to Bank—Flat in question cannot be held Bank's security—Bank could not take recourse to provisions of SRFAESI Act—Action unsustainable—Bank directed to return possession of flat to applicant—In absence of any iota of evidence, compensation cannot be granted to applicant—Respondent cannot be allowed to continue illegality of retaining possession—Ends of justice would be met by directing respondent to return possession of flat to applicant within one week failing which to give daily compensation of Rs. 300/- per day until returning back possession.

IV (2006) BC 38 (DRT—Mumbai) (DRAT/DRT)

— **Section 31**—Civil Procedure Code, 1908—Section 60(1) Proviso (kc)—Attachment and sale of owner's/landlord's property *de hors* tenant's interest—Clause (kc) of proviso to Section 60(1), CPC is aimed at protecting tenant's rights and cannot be imagined to put embargo on owner's reversionary rights.

IV (2006) BC 41 (DRT—Mumbai) (DRAT/DRT)

Sick Industrial Companies (Special Provisions) Act, 1985

— **Section 22(1)**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Section 19(25)—Suspension of legal proceedings, contracts—Protection under Section 22(1) of SICA given only to industrial company, *i.e.* principal borrower and not to guarantor—Appellant is industrial company, already declared as sick company—Entire proceedings have come to halt—No proceedings could be proceeded with except with consent of BIFR—Order passed by DRT liable to be set aside.

IV (2006) BC 7 (DRAT—Chennai) (DRAT/DRT)

Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992

— **Sections 3(3), 9A, 9A(iii), 13, 25**—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Sections 17, 18, 34—Property of person notified under Special Courts Act cannot be sold in execution of certificate obtained under provisions of RDDBFI Act—Certificate against such properties cannot be executed by Recovery Officer under DRT Act—Financial Institution will have to move Special Court in respect of attached property.

IV (2006) BC 1 (Bombay HC) (DB)

Specific Relief Act, 1963

— **Section 34**—Civil Procedure Code, 1908—Order 39 Rules 1, 2; Order 7 Rule 10, Order 7 Rule 11—Court Fees Act, 1870—Section 7(iv)(c)—Injunction —Rejection of Plaint—Suit for declaration simplicitor without seeking consequential relief—Appellant sought declaration and injunction (*ad interim*) restraining respondent from giving effect to that communication till disposal of suit—Rejection

of suit sought on ground that relief of declaration without claiming any consequential relief barred under Section 34 of Specific Relief Act and payment of Court fee—Order of Single Judge directing appellant to amend plaint of their suit and include consequential relief in prayer clause cannot stand test of judicial scrutiny—Plaintiff is *dominus litus* and free to choose his remedy he wants in suit—It is not open to Court to import into plaint or to read into it any relief not asked for by party in order to levy higher Court fee—Impugned order of Single Judge set aside—Single Judge shall decide application under Order 39 Rules 1 and 2, CPC uninfluenced by any observation contained in order.

IV (2006) BC 108 (Delhi HC) (DB)

State Financial Corporation Act, 1951

— State Financial Corporation—Sanctioned loan not disbursed in time—Rightly or wrongly amount of subsidy not paid to Corporation for more than 15 years—Now unit is lying closed—High Court and this Court not called upon to determine question as to who was responsible therefor—No purpose would be served by directing Corporation to pay respondent said amount at this point of time—Serious dispute regarding viability of revival of entire unit —This Court evidently cannot determine such disputed question of fact in these proceedings—Futile to issue writ or in nature of *mandamus* directing Corporation to pay amount of Rs. 15 lacs to respondent-Company—Further observations made by this Court—Impugned judgment unsustainable—Set aside.

IV (2006) BC 132 (SC)

U.P. Regulation of Money-Lending Act, 1976

— Sections 10, 3(6), 15(1), 18—Money Lending—Valid certificate of registration—Recovery of loan amount—Stray transaction of single loan, cannot be said to be business of money lending—From evidence on record, it is not clear that plaintiff was doing business with many people or has done so, many times with defendant, it cannot be said plaintiff was doing money lending business—Suit for recovery of loan maintainable—Rate of interest claimed by plaintiff i.e. 18% compound interest p.a. is excessive rate of interest being case of friendly loan—Defendant shall pay 6% p.a. simple interest on amount of Rs. 78,500/- for period of pendency suit and appeal till payment is made.

IV (2006) BC 16 (Uttaranchal HC)
