REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 501 OF 2020
(ARISING OUT OF SLP (C) NO. 20093 OF 2019)

STANDARD CHARTERED BANK **APPELLANT(S)**

VERSUS

MSTC LIMITED **RESPONDENT(S)**

J U D G M E N T

R.F. Nariman, J.

1) Leave granted.

2) The present appeal raises interesting questions which arise under the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as “the RDB Act” or “the Act”). The brief facts necessary to appreciate the questions raised are as follows:-

(i) On 29.08.2008, a Receivables Purchase Agreement was executed between Standard Chartered Bank, which is the appellant before us and MSTC Limited, which is a Government Company-respondent herein, whereunder receivables from overseas buyers in respect of invoices raised by the respondent against foreign buyers were purchased by the appellant. 95% of the amount raised by the invoices was remitted to the respondent.

(ii) An Export Insurance Policy was obtained by these parties from ICICI Lombard General Insurance Company under which the Insurance Company agreed to indemnify the respondent and the appellant in the event of default in payment of foreign buyers.

(iii) The appellant had lodged a claim with the said Insurance Company which, however, was repudiated on 03.03.2011. In this background, on 13.03.2012, the appellant filed an application under Section 19 of the RDB Act being O.A. No. 43 of 2012 before the DRT, Mumbai for recovery of a sum of Rs.191,03,54,070.96.

(iv) An I.A was then filed by the respondent before the DRT Mumbai, challenging its jurisdiction, which was ultimately disposed of on 26.09.2013 and an appeal therefrom was dismissed on 03.02.2017, holding that the DRT Mumbai did have territorial jurisdiction to go ahead with the case.

(v) At this point, an I.A was filed by the appellant stating that given the admissions contained in the balance sheet of the relevant years of the respondent-Company, a sum of Rs. 222,51,00,000/- was owed by the respondent to the appellant. This I.A. was allowed by the DRT Mumbai on 26.10.2017.

(vi) An appeal was filed by the respondent-Company against the said order before the DRAT on 14.11.2017. While the appeal was pending, Review Application No. 1 of 2018 was filed on 18.12.2017

before the DRT by the respondent-Company after the appeal that was lodged earlier in point of time was withdrawn by the respondent-Company on 02.01.2018.

(vii) In the meanwhile, an application dated 16.02.2018 was made to condone a 28 day delay in filing the review petition before the DRT, the period of limitation under Rule 5A of the Debt Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as "the Rules") being 30 days. This review petition was dismissed by the DRT on 21.04.2018, in which this Court's judgment reported in *International Asset Reconstruction Company of India Limited* vs. *Official Liquidator of Aldrich Pharmaceuticals Limited and Others*, (2017) 16 SCC 137 was followed, and Section 5 of the Limitation Act, 1963 was held not to be applicable to review petitions that were filed under Rule 5A of the Rules. A further plea to exclude time taken under Section 14 of the Limitation Act, 1963 was also dismissed by the DRT stating that a filing of the review petition after the appeal would show that the appeal provision, which requires a minimum 25% deposit, was sought to be circumvented, and, therefore, this being the case, time taken under Section 14 cannot be excluded as the respondent-Company did not move *bona fide* in the matter.

(viii) From the order dated 21.4.2018, a writ petition was filed before

the Bombay High Court on 26.04.2018, which was then disposed of by the impugned judgment on 03.05.2019, holding that the alternative remedy of filing an appeal not being available, the writ petition would be maintainable. In any case, the judgment of this Court in *International Asset Reconstruction Company of India Limited (supra)* was confined to consideration of Section 30 of the RDB Act, and paragraph 14 of the said judgment would make it clear that it would apply to the facts of this case inasmuch as an original application made under Section 19 of the RDB Act, (which by the definition clause under Section 2(b) applies only to applications made under Section 19 and to no others) would subsume an application for review as a review application would originate from an order passed under Section 19 of the RDB Act, as per procedure prescribed under Section 22 of the RDB Act, and would therefore not be an application which could be said to be independent of Section 19 of the RDB Act. This being the case, the High Court set aside the judgment of the DRT, condoned the delay in filing of the review application itself, and restored the review application to the file.

3) Mr. Neeraj Kishan Kaul, learned Senior Advocate appearing on behalf of the appellant, has contended that the High Court is wrong on all counts. First and foremost, the High Court could not have

looked at Order XLVII Rule 7 of the CPC in order to hold that an appeal from an order dismissing a review petition would not be maintainable before the DRAT both for the reason that Order 47 Rule 7 itself is inapplicable under Section 22(1) of the RDB Act and for the reason that Section 20 of the RDB Act makes it clear that appeals lie to the DRAT from all applications that may have been disposed of by the Tribunal under the RDB Act. He further argued that the judgment in *International Asset Reconstruction Company of India Limited (supra)* ought to have been applied correctly in that the *ratio decidendi* of the judgment made it clear that it is only applications under Section 19 that are referred to in Section 24 of the RDB Act, and this being the case, a review application, being an independent proceeding, could not be subsumed within the expression "application" contained in Section 24 of the RDB Act. He also cited the judgment reported in *Kamlesh Verma* vs. *Mayawati and Others*, (2013) 8 SCC 320 to buttress the submission that a review petition cannot be equated with the original proceeding. Further, contrasting Rule 5A of the Rules with Section 20 of the RDB Act, since peremptory language has been used in the said rule, making it clear that a review petition filed beyond 30 days would have to be dismissed, coupled with the fact that no provision for condonation of delay, as in Section 20, is contained in

Rule 5A would also make it clear that the impugned judgment has to be faulted on this ground as well.

4) Mr. Amar Dave, learned Advocate appearing on behalf of the respondent, stoutly resisted each one of these contentions. First and foremost, he asked us to consider the fact that the O.A. before the DRT was in 2012, and it is only after waiting for five years that a thoroughly frivolous application was taken out in 2017 for a judgment on admission. He also adverted to Section 19, in particular, sub-section (2) thereof, to argue that Section 19 is not exhaustive of the types of applications that can be made under the Act. He also strongly relied upon the reasoning of the High Court judgment, and stated that Section 19 and 22 should be read together, as a review proceeding emanates from the original proceeding and is really part and parcel of the proceeding, and this being the case, Section 24 of the RDB Act would apply Section 5 of the Limitation Act, 1963 to review proceedings as well. He strongly relied upon paragraph 12, in particular, in *International Asset Reconstruction Company of India Limited (supra)* to contend that there was a fundamental difference between the facts in that judgment and the facts of the present case. The difference is that in the earlier judgment, Section 30 pre and post amendment was set out, and it was stated that an appeal that was filed against the

orders of recovery officers, which will be governed by Section 30 of the RDB Act, would be appeals filed against a *persona designata* who is not a tribunal, and this being the case, the second sentence of paragraph 12 becomes very important, in which this Court then states that had the recovery officer been held to be a tribunal, the matter would have to be completely differently viewed. It was his case, therefore, that this judgment is wholly distinguishable. He also supported the impugned judgment on maintainability of the Writ Petition.

5) Having heard learned counsel for both sides, it is necessary to set out some of the provisions of the RDB Act and the Rules made thereunder. Section 2(b) of the RDB Act states as follows:

> "2. **Definitions**.-
> (b) "application" means an application made to a Tribunal under section 19;"

Section 19 of the RDB Act states as follows:

> "19. **Application to the Tribunal.** –
> (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-
>
> (a) the branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being; or
> (aa) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business, or personally works for gain; or
> (b) any of the defendants, where there are more than one, at the time of making the application, actually

and voluntarily resides or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises

xxx xxx xxx

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

xxx xxx xxx

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

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

xxx xxx xxx

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order—

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending applications before the Tribunal and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal

of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof."

Sections 20, 21 and 22 of the RDB Act state as follows:

"20. **Appeal to the Appellate Tribunal**. - (1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

xxx xxx xxx

(3) Every appeal under sub-section (1) shall be filed within a period of thirty days the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

21. **Deposit of amount of debt due, on filing appeal.** - Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal fifty percent of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent of the amount of such debt so due to be deposited under this section.

> 22. **Procedure and powers of the Tribunal and the Appellate Tribunal.** - (1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.
> (2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:
> (a) xxx xxx xxx
> (e) reviewing its decisions;"

Section 24 of the RDB Act states as follows:

> "24. **Limitation.** - The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an application made to a Tribunal."

Section 34 (1) of the RDB Act states as follows:

> "34. **Act to have overriding effect**.—
> (1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

Rule 2(b) and 2(c) of the Debt Recovery Tribunal (Procedure)

Rules, 1993 states as follows:

> "2. **Definitions**.-
> (b) – "applicant" means a person making an application under section 19 or under section 31A and includes an "applicant" who files an appeal under section 30(1) of the Act;

(c) "application" means an application filed under section 19 or under section 31A and includes an “appeal” filed under section 30(1) of the Act”

Rule 4(1) of the Rules states as follows:

“4. **Procedure for filing applications**
(1) An application under section 19 or section 31A, or under section 30(1) of the Act may be presented as nearly as possible in Form I, Form II and Form III respectively annexed to these rules by the applicant in person or by his agent or by a duly authorised legal practitioner to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar.”

Rule 5A of the Rules states as follows:

“5A.**Review**.-
(1)Any party considering itself aggrieved by an order made by the Tribunal on account of some mistake or error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.

(2)No application for review shall be made after the expiry of a period of thirty days from the date of the order and no such application shall be entertained unless it is accompanied by an affidavit verifying the application.

(3) Where it appears to the Tribunal that there is no sufficient ground for a review, it shall reject the application but where the Tribunal is of opinion that the application for review should be granted, shall grant the same:

Provided that no such application shall be granted without previous notice to the opposite party to enable him to appear and to be heard in support of the order, a review of which is applied for.”

Rule 7 of the Rules states as follows:

"7. **Application fee**

(1) Every Application under section 19(1), or section 19(2), or section 19(8), or section 30(1) of the Act, or interlocutory application or application for review of decision of the Tribunal shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed Bank Demand Draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal and payable at the place where the Tribunal is situated.

(2) The amount of fee payable shall be as follows:-

S.No.	Nature of Application	Amount of Fee Payable
1.	Application for recovery of debts due under section 19(1) or section 19(2) of the Act (a) Where amount of debt due is Rs. 10 lakhs (b) Where the amount of debt due is above Rs. 10 lakhs	Rs. 12,000 Rs. 12,000 plus Rs. 1,000 for every one lakh rupees of debt due or part thereof in excess of Rs. 10 lakhs, subject to a maximum of Rs. 1,50,000
2.	Application to counter claim under section 19(8) of the Act – (a) Where the amount of claim made is upto Rs. 10 lakhs. (b) Where the amount of claim made is above Rs. 10 lakhs.	Rs. 12,000 Rs. 12,000 plus Rs. 1,000 for every one lakh rupees or part thereof in

		excess of Rs. 10 lakhs, subject to a maximum of Rs. 1,50,000
3.	Application for Review including review application in respect of counter-claim (a) against an interim order (b) against a final order excluding review for correction of clerical or arithmetical mistakes	Rs. 125 50% of fee payable at rates as applicable on the applications under section 19(1) or 19(8) of the Act, subject to a maximum of Rs. 15,000
4.	Application for interlocutory order	Rs. 250
5.	Appeals against orders of the Recovery Officer If the amount appealed against is (i) less than Rs. 10 lakhs (ii) Rs. 10 lakh or more but less than Rs. 30 lakhs (iii) Rs. 30 lakhs or more	Rs. 12,000 Rs. 20,000 Rs. 30,000
6.	Vakalatnama	Rs. 5”

6) A reading of the aforesaid provisions of the Act and Rules would show that review petitions are dealt with in Section 22(2)(e) read with Rule 5A of the Rules. Section 24, which applies the provisions of the Limitation Act to applications made to a Tribunal, would, as per the definition section contained in Section 2(b), apply only to applications that are made under Section 19, which are original applications to recover debts that are made by banks and financial institutions. What is clear is that an application for review cannot possibly be said to be an application filed under Section 19 even on a cursory reading of the provisions of the Act, as it traces its origin to Section 22(2)(e) read with Rule 5A of the Rules.

7) As a matter of fact, applications that are made to the Tribunal under Section 19 of the Act are only made in order to recover a debt from any person. Even Section 19(2), which is strongly relied upon by Shri Dave, makes it clear that another bank or financial institution may join an applicant bank or financial institution at any stage of the proceeding before the final order is passed by making an application against the same debtor for debts owed to such other bank or financial institution. Also, under Section 19(5) of the Act, a written statement may include a claim for set-off and/or a counter-claim and under Section 19(18) of the Act, interim orders

may be passed in applications filed for recovery of debts under Section 19 of the Act. All this must be contrasted with an application for review that is filed under Section 22 (2)(e) of the Act read with Rule 5A of the Rules. Such applications are not for recovery of debts but are only applications to correct errors apparent on the face of the record in a judgment that has been delivered in an application filed under Section 19.

8) A reading of the Rules is also illuminating. Rules 2(b) and 2(c) of the Rules define “applicant” and “application”, respectively, as including applicants and applications filed under Section 19, 31A as well as appeals filed under Section 30(1) of the Act. An application under Section 31A is an application to enforce a decree or order passed by any court before the commencement of the Amendment Act of 2000 and which has not yet been executed. An appeal under Section 30(1) is an appeal to the Tribunal against orders of the Recovery Officer made under the Act. The reason why Rule 2(c) of the Rules defines application as including an application under Section 31A and an appeal filed under Section 31 of the Act, apart from applications filed under Section 19, is because under Rule 4 of the Rules, the procedure for filing such applications/appeal is under Forms I to III appended to the Rules. What is important to note is that even this extended definition,

under the Rules, does not include an application for review filed under Rule 5A of the Rules. In point of fact, Rule 7 makes it abundantly clear that each such application, including applications for review, are viewed separately and independently, as fees payable for filing such applications are vastly different, as is clear from Rule 7(2) of the Rules.

9) In fact, this Court in *International Asset Reconstruction Company of India Limited (supra)* had to consider whether Section 5 of the Limitation Act can be invoked to condone delay in the filing of an appeal after the prescribed period of 30 days under Section 30(1) of the RDB Act. The Court first stated, in paragraph 8, that the RDB Act is undoubtedly a special law and a complete code by itself with regard to expeditious recovery of dues to banks and financial institutions. After then noticing Section 22(1) in paragraph 9 and stating that Section 5 of the Limitation Act cannot *proprio vigore* apply to a tribunal as a tribunal is not a Court (in paragraph 10), the Court went on to hold:

> "**11.** An "application" is defined under Section 2(b) of the RDB Act as one made under Section 19 of the Act. The latter provision in Chapter IV deals with institution of original recovery proceedings before a Tribunal. An appeal lies against the order of the Tribunal under Section 20 before the Appellate Tribunal within 45 days, which may be condoned for sufficient cause under the proviso to Section 20(3) of the Act. The Tribunal issues a recovery certificate under Section 19(22) to the Recovery officer who then

proceeds under Chapter V for recovery of the certificate amount in the manner prescribed. A person aggrieved by an order of the Recovery officer can prefer an appeal before the Tribunal under Rule 4, by an application in the prescribed Form III. Rule 2(c) defines an "application" to include a memo of appeal under Section 30(1). The appeal is to be preferred before the Tribunal, as distinct from the Appellate Tribunal, within 30 days. Section 24 of the RDB Act, therefore, manifestly makes the provisions of the Limitation Act applicable only to such an original "application" made under Section 19 only. The definition of an "application" under Rule 2(c) cannot be extended to read it in conjunction with Section 2(b) of the Act extending the meaning thereof beyond what the Act provides for and then make Section 24 of the RDB Act applicable to an appeal under Section 30(1) of the Act. Any such interpretation shall be completely contrary to the legislative intent, extending the Rules beyond what the Act provides for and limits. Had the intention been otherwise, nothing prevented the Legislature from providing so specifically.

12. A comparative study of Section 30, pre and post-amendment in the year 2000, reveals that the deemed status of proceedings before the Recovery officer, as a Tribunal, stands denuded. Had the proceedings before the Recovery officer deemed to be before a Tribunal, entirely different considerations may have arisen.

Old Section 30 before the 2000 Amendment	Section 30 after the 2000 Amendment
"30 *Orders of Recovery Officer to be deemed as order of Tribunal.*- Notwithstanding anything contained in Section 29, an order made by the Recovery Officer in exercise of his powers un-	"30. *Appeal against the order of Recovery Officer.*- (1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made un-

der Sections 25 to 28 (both inclusive), shall be deemed to have been made by the Tribunal and an appeal against such orders shall lie to the Appellate Tribunal."	der this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal. (2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive)."

13. The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the legislature has provided for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The Appellate Tribunal has been conferred the power to condone delay beyond 45 days under Section 20(3) of the Act. The proceedings before the Recovery officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. The pre-

> scribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer therefore cannot be condoned by application of Section 5 of the Limitation Act."

10) The judgment of this Court makes it plain, though in a slightly different context, that the only application that is referred to by Section 24 of the RDB Act is an application filed under Section 19 and no other. This being the case, an application for review, not being an application under Section 19, but an application under Section 22(2)(e) read with Rule 5A of the Rules, this judgment would apply on all fours to exclude applications which are review applications from the purview of Section 24 of the RDB Act.

11) However, Mr. Dave laid great stress on paragraph 12 of the said judgment and, in particular, the sentence "had the proceedings before the Recovery Officer deemed to be before a Tribunal, entirely different considerations may have arisen". From this sentence, the learned counsel sought to infer that it would not only be applications under Section 19 that would come within the "application" spoken of in Section 24, but other applications also.

12) We are afraid we are unable to agree with the aforesaid submission. The clear ratio *decidendi* of this judgment makes it abundantly clear that the only application referred to in Section 24 is an application filed under Section 19 and to no other. The sentence that is extracted and relied upon by Mr. Dave only makes sense in

the context of Section 30 unamended, when read juxtaposed with Section 30 as amended. Under the unamended section, when the recovery officer's order was deemed as an order of the Tribunal, appeals would lie to the Appellate Tribunal. This would mean that Section 20 of the RDB Act would apply, as a result of which Section 20(3) would kick in and would permit condonation of delay. After the amendment, it is important to note that the recovery officer is no longer considered a Tribunal, as result of which an appeal from a recovery officer's order is made not to the Appellate Tribunal, but to the Tribunal of first instance. It is in this context that the aforesaid sentence in paragraph 12 of the Court's judgment is to be read, making it clear that if the unamended Section 30 were to apply, the provision contained in Section 20(3) would be attracted, permitting condonation of delay.

13) Mr. Dave's second contention that, in any case, a review petition is only a correction of the order made in the original proceeding, and therefore part and parcel of the original proceeding, cannot be countenanced in view of this Court's judgment in *Kamlesh Verma* vs. *Mayawati and Others (supra)*. This Court held:

> "13. In a criminal proceeding, review is permissible on the ground of an error apparent on the face of the record. A review proceeding cannot be equated with the original hearing of the case.

> 20.2. When the review will not be maintainable:
>
> (i) xxx
>
> (iii) Review proceedings cannot be equated with the original hearing of the case."

14) The peremptory language of Rule 5A would also make it clear that beyond 30 days there is no power to condone delay. We may also note that Rule 5A was added in 1997 with a longer period within which to file a review petition, namely, 60 days. This period was cut down, by amendment, with effect from 04.11.2016, to 30 days. From this two things are clear: one, whether in the original or unamended provision, there is no separate power to condone delay, as is contained in Section 20(3) of the Act; and second, that the period of 60 days was considered too long and cut down to 30 days thereby evincing an intention that review petitions, if they are to be filed, should be within a shorter period of limitation – otherwise they would not be maintainable.

15) We are also of the view that the High Court wrongly applied Order XLVII Rule 7 of the Code of Civil Procedure. Order XLVII Rule 7 states as follows:

> "7. **Order of rejection not appealable** - Objections to order granting application.-
> (1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal

> from the decree or order finally passed or made in the suit.
> (2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.
> (3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party."

16) Section 22(1) of the Act makes it clear that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, making it clear thereby that Order XLVII Rule 7 would not apply to the Tribunal. Also, in view of Section 20, which applies to all applications that may be made, including applications for review, and orders being made therein being subject to appeal, it is a little difficult to appreciate how Order XLVII Rule 7 could apply at all, given that Section 20 of the RDB Act is part of a complete and exhaustive code. Section 34 of the Act makes it clear that the 1993 Act, (and, therefore, Section 20), will have overriding effect over any other law for the time being in force, which includes the Code of Civil Procedure. The High Court, in holding that no appeal would be maintainable against the dismissal of the review petition, and that therefore a writ petition would be

maintainable, was clearly in error on this count also.

17) Shri Dave's contention that as to the appellant's conduct, as in an application filed in 2012 an I.A praying that a judgment should be given on admission, was filed unconscionably late i.e. only in 2017, five years later, also has no legs to stand. In 2013, the respondent challenged the jurisdiction of the DRT Mumbai which challenge was repelled finally in appeal only in 2017 after which the said I.A was filed. In any event, this is not an argument which would, by itself, lead to a dismissal of the SLP filed by the appellant under Article 136 of the Constitution of India.

18) For all these reasons therefore, we are of the view that the High Court judgment cannot be sustained and is thus set aside. The appeal is allowed accordingly.

……..... J.
(ROHINTON FALI NARIMAN)

……..... J.
(V. RAMASUBRAMANIAN)

New Delhi;
January 21, 2020.