HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No.21860/2018

1. Kirti Kapoor S/o Late Sh. R.K. Kapoor, Aged About 47 Years, R/o House No. 6 Kha 13, Jawahar Nagar, Jaipur.
2. Anil Kumar Sharma S/o Late Sh. R.L. Sharma, R/o Plot No. A-1, Ganesh Colony, Jhotwara, Jaipur.
3. Raj Kumar S/o Late Sh. Prem Kumar Rajvanshi, R/o House No. 1/14, SFS, Mansarvor, Jaipur.
4. Kailash Tailor S/o Sh. Munshi Ram, R/o Plot No. 18, Ganeshpuri Colony, Rawal Ji Ka Bandha, Jaipur.
5. Shyam Sundar Sharma S/o Sh. Kishan Lal Sharma, R/ G-5 Shree Gopal Apartment, D-283, Bihari Marg, Banipark, Jaipur.

----Petitioners

Versus

Union Of India Through Secretary, Ministry Of Finance, New Delhi.

----Respondent

For Petitioner(s)	:	Ms. Anita Aggarwal
For Respondent(s)	:	Mr. R.D. Rastogi, Additional Solicitor General, assisted by Mr. Ashish Kumar and Mr. Amitosh Pareek

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHA

Judgment

//Reportable//

01/07/2019

This writ petition has been filed by Kirti Kapoor and four others, challenging the validity of notification dated 06.09.2018 issued by the Central Government, Ministry of Finance (Department of Financial Services), New Delhi. Prayer has been made to quash and set aside the aforesaid notification and pass

any other order as may be deemed fit and proper in the facts of the case.

The Central Government has issued the aforesaid notification invoking its power under sub-section (4) of Section 1 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, 'the Act of 1993'), thereby raising the threshold pecuniary limit of ten lakh rupees to twenty lakh rupees for filing application for recovery of debts in the Debts Recovery Tribunal by banks and financial institutions. The notification has provided that the provisions of the Act of 1993 shall not be attracted where the amount of debt due to any bank is less than twenty lakh rupees.

Ms. Anita Aggarwal, learned counsel for petitioners, submitted that as per the provisions of Section 1(4) of the Act of 1993, the provisions of the said Act are not applicable where the amount of debt due to any bank or financial institution etc. is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify. A plain reading of this provision reveals that while the provisions of the Act of 1993 shall be applicable to debts of ten lakh rupees and above but the Central Government with a view to bring more cases in the domain of the Debts Recovery Tribunal, can reduce the amount of ten lakh rupees to one lakh rupees but it has no authority to increase the amount of ten lakh rupees to any higher amount. Relying on the judgment of the Supreme Court in **Union of India and Another Vs. Delhi High Court Bar Association and Others – (2002) 4 SCC 275**, learned counsel argued that the Supreme Court therein held that for the disputes between the banks and the other parties, the jurisdiction of the Tribunal in a debt claim of more than ten lakh rupees may be

attracted but if it is less than ten lakh rupees, the ordinary civil court would have the jurisdiction. But the Central Government by the impugned notification has now created a situation where the claims of more than ten lakh rupees, upto twenty lakh rupees, would be excluded from the purview of the Debts Recovery Tribunal and sent to the Civil Courts. Relying on the judgment of Division Bench of the Allahabad High Court in **Mudit Entertainment Industries Vs. Banaras State Bank Ltd. and Others – 2000 (2) AWC 1008 : (2000) 1 UPLBEC 25**, learned counsel argued that the High Court on interpretation of Section 1(4) of the Act of 1993 held that having regard to the contingency, debts less than ten lakh but more than one lakh can be included within the purview of the Tribunal. It is thus evident that the authority has been conferred on the Central Government to only reduce the amount of claim from ten lakh rupees downwards but with a rider that such reduction in the amount shall not be less than one lakh rupees.

Ms. Anita Aggarwal, learned counsel for the petitioners, submitted that imperativeness of enactment of the Act of 1993 also finds adequately reflected in the judgment of the Supreme Court in **United Bank of India Vs. Debts Recovery Tribunal – (1999) 4 SCC 69**. It is submitted that the prime object of the enactment appears to be to provide for the establishment of tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. A purposive construction and interpretation of the Statute has to be therefore made so as to advance the purpose of the enactment and intention of the legislature. Reliance in this connection is placed on the judgments

of the Supreme Court in **RMD Chamarbaugwala Vs. Union of India – AIR 1957 SC 628** and **Competition Commission of India Vs. Steel Authority of India Ltd. - (2010) 10 SCC 744**. It is argued that a plain reading of the provisions of Section 1(4) of the Act of 1993 does not admit of an interpretation, by which the amount of ten lakh rupees can be raised to twenty lakh rupees, without amending the Act, merely by notification of the Central Government. Doing so would be acting contrary to the intention of the Parliament in providing speedy trial, disposal of such claim cases and would result in throwing away the cases falling from the range of ten lakh rupees to twenty lakh rupees, in the arena of civil courts/commercial courts having applicability of principles of Civil Procedure Code which is a long and tardy procedure. It would be the anti-thesis, retrograde move defeating the very object of the Act of 1993. Even if there are two views possible on interpretation of Section 1(4) of the Act of 1993, the Court has to choose such interpretation which fulfills the object of the Act. The argument advanced on behalf of the Central Government that the limit of ten lakh rupees has been increased to twenty lakh rupees on account of fall in intrinsic value of rupee due to inflationary pressure on the economy cannot find any countenance and justification for raising this limit. This would tantamount to legislation which is quite impermissible. In case the Central Government intends to do so, the same cannot be done only by amending the provisions of Section 1(4) of the Act of 1993. Reliance in this behalf is placed on the judgment of the **Government of Andhra Pradesh and Others Vs. P. Laxmi Devi – (2008) 4 SCC 720**.

Ms. Anita Aggarwal, learned counsel for the petitioners, argued that mere use of punctuation marks in between the words "less ten lakh rupees or such other amount" and "being not less than one lakh rupees" would not give jurisdiction to the Central Government to increase the limit of ten lakh rupees to twenty lakh rupees. Learned counsel relied on the judgment of the Allahabad High Court in **L. Mansa Vs. Mt. Ancho – AIR 1933 All. 521**, wherein it was held that punctuation marks cannot control the meaning of a section. Intention of the legislature in the present case has to be gathered from the plain reading of the provision. Reliance is also placed on the judgment of the Supreme Court in **Central Bank of India Vs. State of Kerala & Others – (2009) 4 SCC 94**, wherein it has been held that the sole criteria of enactment of the Act of 1993 and the establishment of the Debts Recovery Tribunals has been to ensure expeditious recovery of the bank debts. It is argued that the Supreme Court in **State of West Bengal and Others Vs. Swapan Kumar Guha and Others – (1982) 1 SCC 561** held that it would be safer and more satisfactory to discover the true meaning of the clause by having regard to substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression is used. The DRT was established with a view that industrialization was growing in India and with growing economy the problem of defaults in repayment of bank loans was also increasing and legislature wanted to provide a speedier mechanism for recovery of bank dues, since the Civil Courts were already flooded with other civil disputes. It is argued that the Supreme Court in the **State of Rajasthan Vs. Basant Nahata – (2005) 12 SCC 77**

held that the delegation of power to the legislature cannot be wide, uncanalised or unguided. If the interpretation of the words "or such other amount" is taken that any amount more than ten lakh rupees can be taken as the threshold limit, it would amount to giving uncanalised, unguided power to the delegate and would also amount to delegating the essential legislative functions.

Reliance is placed on the judgment of the Supreme Court in **State of Bombay Vs. Narottam Das Jethabhai and Another – AIR 1951 SC 69**, wherein the Bombay High Court, while interpreting Sections 3 and 4 of the Bombay City Civil Court Act, 1948 held that the legislation entrusted on the provincial government particular powers or a limited discretion and the discretion can be exercised within defined limits of it. It was further observed that the policy of the legislature in regard to the pecuniary jurisdiction of the court that was being set up was settled by Sections 3 and 4 of the Act and it was to the effect that initially its pecuniary limit is ten thousand and in future if the circumstances make it desirable and this was left to the determination of the provincial government, it could be given jurisdiction upto the value of twenty five thousand rupees. In the present matter, the legislature itself has decided the maximum pecuniary jurisdiction by providing that no cases less than ten lakh debt shall be entertained by the Tribunal or such other amount, being not less than one lakh rupees, as the central government may, by notification, specify. It is argued that although Section 1(4) of the Act of 1993 does not suffer from vice of excessive delegation since the legislature has clearly provided the limits in which the discretion can be exercised by the Central Government,

the interpretation given to it by the Central Government brings Section 1(4) within the ambit of excessive delegation, thus making it bad and amenable to challenge on such ground.

It is submitted that the Supreme Court in **Union of India Vs. Brig. P.S. Gill – (2012) 4 SCC 463**, held that each word used in the enactment must be allowed to play its role, howsoever, significant or insignificant, the same may be, in achieving the legislative intent and promoting legislative object. Reliance is also placed on the judgments of the Supreme Court in **Ajoy Kumar Banerjee Vs. Union of India – (1984) 3 SCC 127** and **J.K. Industries Ltd. Vs. Union of India – (2007) 13 SCC 673**.

E-converso, Mr. R.D. Rastogi, learned Additional Solicitor General, opposed the writ petition and submitted that the challenge to the notification dated 06.09.2018 is absolutely devoid of any merit. The petitioners have failed to show how the aforesaid notification is contrary to the provisions of Section 1(4) of the Act of 1993. When it was originally enacted, Section 1(4) provided the threshold value of ten lakh rupees for a claim to be filed before the Tribunal and also provided that the Central Government may, by notification, specify such other amount, being not less than one lakh rupees. It is thus clear that while there is restriction that any other amount as may be notified by the Central Government, which could be either more than ten lakh rupees or less than that but in no case it would be lower than one lakh rupees. It is therefore argued that "or such other amount" used in Section 1(4) clearly enables the Central Government to make upward increase in the limit of ten lakh rupees by means of

notification. Referring to 'Statement of Object and Reasons' of the Act of 1993, learned Additional Solicitor General argued that the Tribunal and the Appellate Tribunal were established with a view to ensuring expeditious adjudication and recovery of debts due to the banks and financial institutions, and thereby putting into proper utilization of the public money for the development of the country. It was therefore necessary to increase the pecuniary limit so that the objects of the Act of 1993 may be achieved expeditiously and effectively. It is with this end in view that the Central Government in exercise of powers conferred on it by Section 1(4) of the Act of 1993 has issued the impugned notification. It is argued that the impugned notification could be rendered invalid only on the ground of being issued without jurisdiction, mala fide, unreasonableness and arbitrariness alone. Not only the petitioners have not alleged any mala-fide, they have failed to show how the aforesaid notification is arbitrary or unreasonable.

Learned Additional Solicitor General, submitted that the minimum limit of ten lakh rupees for filing the Original Applications before the Tribunals, when it was originally fixed in the year 1993, i.e., 25 years ago, was justified. As per the inflation indicator, the worth of ten lakh rupees in the year 1993, when the Act was introduced, is same as Rs.49.23 lakh in the year 2017. The Chairpersons of various Debts Recovery Tribunals in the interactive session held in Department of Financial Services on 17.07.2018 also pointed out the necessity of raising minimum limit. This was again suggested during the review meetings with the General Managers (Recovery) of various Public Sector Banks on 13.07.2018 and from 27.07.2018 to 01.08.2018 that

enhancement of the limit can be considered. It is argued that large number of cases for recovery in the segment of ten to twenty lakh rupees are coming up before the Tribunals, thus hampering the progress of cases having value of more than twenty lakh rupees. Reference is made to various figures and data to which we shall advert little later.

Mr. R.D. Rastogi, learned Additional Solicitor General, argued that the Supreme Court in number of cases has categorically held that there is presumption of constitutional validity in favour of an enactment and it is the duty of the court to uphold the constitutional validity of a statute. The burden is on him who challenges the same to show that there has been a clear transgression of constitutional principles. The petitioner has failed to show that how the notification transgresses constitutional limits. Reliance is placed on the judgment of the Supreme Court in **Dharmendra Khirtal Vs. State of U.P. - (2013) 8 SCC 368**. It is argued that the constitutional validity of the provisions of the Act of 1993 has already been tested and upheld by the Supreme Court in **Union of India and Another Vs. Delhi High Court Bar Association and Others**, supra. Reliance is also placed on the judgment of the Supreme Court in **State of Bombay Vs. Narottam Das Jethabhai and Another**, supra. Relying on the judgments of the Supreme Court in **State of Orissa Vs. Gopinath Dash – (2005) 13 SCC 495** and **Master Marine Services (P) Ltd. Vs. Metcalfe and Hodgkinson (P) Ltd. and Another – (2005) 6 SCC 138**, it is argued that the court should be slow in interfering with the administrative decisions. It is argued that the words "being not less than one lakh rupees" used

in Section 1(4) of the Act of 1993 immediately after the words "or such other amount" are only in continuation. Reliance in this behalf is placed on the judgment of this Court in **Badrinarain and Others Vs. State – AIR 1957 Raj. 64** and that of Delhi High Court in **Rajasthan Cylinders & Containers Ltd. Vs. Competition Commission of India – 2019 SCC OnLine Del 7806**. Learned Additional Solicitor General also relied on the judgment of the Delhi High Court in **Whirlpool of India Ltd. Vs. Regional Provident Fund Commissioner – 2013 SCC OnLine Del 2739**, wherein it was held that "...In my view, the expression any other similar allowance…." takes its colour from the expression "commission". This is so because the expression uses the words similar allowance...". It is argued that when the language of the provision is clear and simple and does not leave any doubt in interpretation, it has to be given effect to.

We have given our anxious consideration to rival submissions and perused the material on record and also studied the cited precedents.

We may at the outset make it clear that what is challenged before us is the notification purported to have been issued by the Central Government in exercise of powers conferred by sub-section (4) of Section 1 of the Act of 1993 and not that provision as such. Our endeavour would therefore be only to find out whether the Central Government, by issuing the aforesaid notification, was competent to raise the threshold limit of ten to twenty lakh rupees for maintainability of a petition for recovery of debt before the Debts Recovery Tribunal by any bank or financial institution. In order therefore to fully comprehend the controversy,

we deem it appropriate to reproduce Section 1(4) of the Act of 1993, which reads as under:-

> "1. Short title, extent, commencement and application.-
> (1) ….
> (2) ….
> (3) ….
> (4) The provisions of this Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify."

Reading of the aforesaid provision at the first blush makes one gather the impression that the Parliament by aforesaid provision has prescribed the minimum limit of ten lakh rupees for applicability of the provisions of the Act of 1993 to the claims but at the same time, it gave the authority to the Central Government to specify by notification "such other amount" "being not less than one lakh rupees". The cursory reading of the aforesaid provision therefore also gives the further impression that while the Central Government in specifying "such other amount" may choose any amount between ten and one lakh rupees but neither can it specify an amount higher than ten lakh rupees nor less than one lakh rupees. However on deeper examination we have concluded, for reasons we shall state hereinafter, that while the Central Government is not competent to specify any amount which is less than one lakh rupees for the purpose of attractibility of the provisions of the Act of 1993, but it can certainly enhance the threshold limit of ten lakh rupees.

Section 1(4) of the Act of 1993 does not actually delegate any legislative power on the Central Government. It is a case of conditional legislation and prescribed a certain condition on

fulfillment of which the Central Government has been authorized to give effect as to what had already been resolved by the Parliament. Learned counsel for both the parties cited number precedents but the nearest on the subject is the decision of the five-Judge Constitution Bench of the Supreme Court in **State of Bombay Vs. Narottam Das Jethabhai and Another**, supra, wherein constitutional validity of the Bombay City Civil Court Act, 1948 as also the validity of the notification issued by the State Government under Section 4 thereof, was called in question. The Bombay High Court held that though the Act was intra vires the Constitution but Section 4 thereof, was void and inoperative. The State of Bombay as well as the Respondent no.1 both approached the Supreme Court by filing separate appeals on leave being granted. Section 3 of the Bombay Act provided that the Provincial Government may, by notification in the Official Gazette, establish for the Greater Bombay a Court, to be called the Bombay City Civil Court. Notwithstanding anything contained in any law, such Court shall have jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature, not exceeding ten thousand rupees in value, and arising within the Greater Bombay, except suits or proceedings, which are cognizable by the High Court. The proviso thereto however stipulated that "the Provincial Government may, from time to time, after consultation with the High Court, by a like notification extend the jurisdiction of the City Court to any suits or proceedings" which are cognizable by the High Court. Section 4 of the Act provided that "subject to the exceptions specified in Section 3, the Provincial Government may, by notification in the Official Gazette, invest the City Court with

jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature arising within the Greater Bombay and of such value, not exceeding twenty-five thousand rupees, as may be specified in the notification." We shall however deal with the judgment only in so far as it pertains to the question posed before us in the present case. Each of the Hon'ble Judges, who sat on the Constitution Bench, wrote separate, though concurring, judgments, whereby the decision of the Bombay High Court was reversed. Hon'ble Mr. Justice Fazl Ali, who presided over the Bench, repelled the argument that a Provincial Legislature has, by aforesaid Section 4, delegated the legislative power to the Provincial Government, which it cannot do. The relevant discussion was made in para 18 of the judgment, which reads thus:-

> "18. It is contended that this section is invalid, because the Provincial Legislature has thereby delegated its legislative powers to the Provincial Government which it cannot do. This contention does not appear to me to be sound. The section itself shows that the Provincial Legislature having exercised its judgment and determined that the New Court should be invested with jurisdiction to try suits and proceedings of a civil nature of a value not exceeding Rs. 25,000, left it to the Provincial Government to determine when the Court should be invested with this larger jurisdiction, for which the limit had been fixed. It is clear that if and when the New Court has to be invested with the larger jurisdiction, that jurisdiction would be due to no other authority than the Provincial Legislature itself and the court would exercise that jurisdiction by virtue of the Act itself. As several of my learned colleagues have pointed out, the case of Queen v. Burah [3 A.C. 889.], the authority of which was not questioned before us, fully covers the contention raised, and the impugned provision is an instance of what the Privy Council has designated as conditional legislation, and does not really delegate any legislative power but merely prescribes as to how effect is to be given to what the Legislature has already decided. As the Privy Council has pointed out, legislation conditional on the use of particular powers or on the exercise of a limited discretion entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing, and in many instances it may be

highly convenient and desirable. Examples of such legislation abound in England, America and other countries. …..."

Hon'ble Mr. Justice M.C. Mahajan (as His Lordship then was), in his separate opinion, which is to be found in para 37 of the report, held as under:-

"37. I find it difficult to accept this view. Without applying its mind to the question as to whether the new Court which it was setting up should have a jurisdiction higher than Rs. 10,000, how could the legislature possibly enact in Section 4 that the pecuniary jurisdiction of the new court would not exceed Rs. 25,000. The fixation of the maximum limit of the court's pecuniary jurisdiction is the result of exercise of legislative will, as without arriving at this judgment it would not have been able to determine the outside limit of the pecuniary jurisdiction of the new court. The policy of the legislature in regard to the pecuniary jurisdiction of the court that was being set up was settled by Sections 3 and 4 of the Act and it was to the effect that initially its pecuniary jurisdiction will be limited to Rs. 10,000 and that in future if circumstances make it desirable - and this was left to the determination of the Provincial Government - it could be given jurisdiction to hear cases up to the value of Rs. 25,000. It was also determined that the extension of the pecuniary jurisdiction of the new court will be subject to the provisions contained in the exceptions to Section 3. I am therefore of the opinion that the learned Chief Justice was not right in saying that the legislative mind was never applied as to the conditions subject to which and as to the amount up to which the new court could have pecuniary jurisdiction. All that was left to the discretion of the Provincial Government was the determination of the circumstances under which the new court would be clothed with enhanced pecuniary jurisdiction. The vital matters of policy having been determined, the actual execution of that policy was left to the Provincial Government and to such conditional legislation no exception could be taken. The section does not empower the Provincial Government to enact a law as regards the pecuniary jurisdiction of the new court and it can in no sense be held to be legislation conferring legislative power on the Provincial Government. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx."

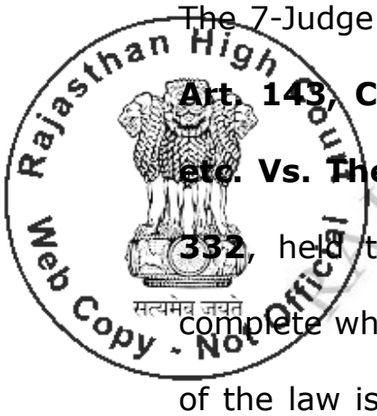
Hon'ble Mr. Justice B.K. Mukherjea gave his concurring opinion in para 58 of the report, which reads as under:-

> "58. As regards the first point, I agree that the contention of the appellant is sound and must prevail. I have no hesitation in holding that the Legislature in empowering the Provincial Government to invest the City Court, by notification, with jurisdiction of such value not exceeding Rs. 25,000, as may be specified in the Notification, has not delegated its legislative authority to the Provincial Government. The provision relates only to the enforcement of the policy which the Legislature itself has laid down. The law was full and complete when in left the legislative chamber permitting the Provincial Government to increase the pecuniary jurisdiction of the City Court up to a certain amount which was specified in the Statute itself. What the Provincial Government is to do is not to make any law; it has to execute the will of the Legislature by determining the time at which and the extend to which, within the limits fixed by the Legislature, the jurisdiction of the court, should be extended. This is a species of conditional legislation which comes directly within the principle enunciated by the Judicial Committee in The Queen v. Burah [5 I.A. 178], where the taking effect of a particular provision of law is made to depend upon determination of certain facts and conditions by an outside authority."

His Lordship Justice S.R. Das, while rejecting the argument that the legislature has not applied its mind or has not laid down any policy, observed in para 85 of the report as under:-

> "85. xxxx Adopting the same method of construction and adopting the language of Lord Selborne it may well be said that in enacting Section 3 the Legislature itself has determined, in the due and ordinary course of legislation, to establish an additional Court of civil jurisdiction with jurisdiction to entertain suits and other proceedings arising within the Greater Bombay of the value up to Rs. 10,000 leaving it, by Section 1(2), to the Provincial Government to say at what time that change should take place. Likewise, it may be said that in enacting Section 4 the Legislature itself has decided that it is fit and proper to extend the pecuniary jurisdiction of the new Court, not necessarily and at all events or all at once but, if and when the Provincial Government should think it desirable to do so and accordingly entrusted a discretionary power to the Provincial Government. It is entirely wrong to say that the Legislature has not applied its mind or laid down any policy. Indeed, the very fact that the extension of pecuniary jurisdiction should not exceed twenty-five thousand rupees, that the extension should be subject to the exceptions specified in Section 3 clearly indicate

> that the Legislature itself has decided that the extension of the pecuniary jurisdiction of the new Court should be made, not necessarily or at all events or all at any one time but when the Provincial Government may consider it desirable to do so and while entrusting a discretionary power with the Provincial Government to determine the time for investing such extended jurisdiction on the new Court, the Legislature itself has also prescribed the limits of such extension. Xxxxx xxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx."



The 7-Judge Constitutional Bench of the Supreme Court in **In Re: Art. 143, Constitution of India and Delhi Laws Act (1912) etc. Vs. The Part C States (Laws) Act, 1950 - AIR 1951 SC 332**, held that in a conditional legislation, the law is full and complete when it leaves the legislative chamber, but the operation of the law is made dependent upon the fulfillment of a condition, and what is delegated to an outside body/the authority to determine, by the exercise of its own judgment, whether or not the condition has been fulfilled. Thus, conditional legislation has all along been treated in judicial pronouncements not to be a species of delegated legislation at all. It comes under a separate category, and, if in a particular case all the elements of a conditional legislation exist, the question does not arise as to whether in leaving the task of determining the condition to an outside authority, the legislature acted beyond the scope of its powers.

Yet another Constitution Bench of the Supreme Court in **Sardar Inder Singh Vs. The State of Rajasthan and Others – AIR 1957 SC 510**, examined the provision contained in Section 3(1) of the Rajasthan (Protection of Tenants) Ordinance, 1949, which, inter alia, provided that it shall come into force at once, and shall remain in force for a period of two years unless this period is further extended by the Rajpramukh by notification

published in the Rajasthan Gazette. Their Lordships in para 10 of the report held as under:-

> "10. ……. Such legislation is termed conditional, because the Legislature has itself made the law in all its completeness as regards "place, person, laws, powers" leaving nothing for an outside authority to legislate on, the only function assigned to it being to bring the law into operation at such time as it might decide,. And it can make no difference in the character of a legislation as a conditional one that the legislature, after itself enacting the law and fixing, on a consideration of the facts as they might have then existed, the period of its duration, confers a power on an outside authority to extend its operation for a further period if it is satisfied that the state of facts which called forth the legislation continues to subsist."

In **Vasu Dev Singh and Others Vs. Union of India and Others – (2006) 12 SCC 753**, the distinction between the conditional legislation and delegated legislation was succinctly delineated in para 16 of the judgment in the following terms:-

> "We, at the outset, would like to express our disagreement to the contentions raised before us by the learned counsel appearing on behalf of Respondents that the impugned notification is in effect and substance a conditional legislation and not a delegated legislation. The distinction between conditional legislation and delegated legislation is clear and unambiguous. In a conditional legislation the delegatee has to apply the law to an area or to determine the time and manner of carrying it into effect or at such time, as it decides or to understand the rule of legislation, it would be a conditional legislation. The legislature in such a case makes the law, which is complete in all respects but the same is not brought into operation immediately. The enforcement of the law would depend upon the fulfilment of a condition and what is delegated to the executive is the authority to determine by exercising its own judgment as to whether such conditions have been fulfilled and/or the time has come when such legislation should be brought in force. The taking effect of a legislation, therefore, is made dependent upon the determination of such fact or condition by the executive organ of the Government. Delegated legislation, however, involves delegation of rule making power of legislation and authorises an executive authority to bring in force such an area by reason thereof. The discretion conferred on the executive by way of

> delegated legislation is much wider. Such power to make rules or regulations, however, must be exercised within the four corners of the Act. Delegated legislation, thus, is a device which has been fashioned by the legislature to be exercised in the manner laid down in the legislation itself. By reason of Section 3 of the Act, Administrator, however, has been empowered to issue a notification whereby and whereunder, an exemption is granted for application of the Act itself."

In **State of T.N. Vs. K. Sabanayagam and Another – (1998) 1 SCC 318**, the Supreme Court held that conditional legislation can be broadly classified into three categories; (1) when the legislature has completed its task of enacting a statute, the entire superstructure of the legislation is ready but its future applicability to a given area is left to the subjective satisfaction of the delegate who being satisfied about the conditions indicating the ripe time for applying the machinery of the said Act to a given area exercises that power as a delegate of the parent legislative body; (2) the delegate has to decide whether and under what circumstances a completed Act of the parent legislation which has already come into force is to be partially withdrawn from operation in a given area or in given cases so as not to be applicable to a given class of persons who are otherwise admittedly governed by the Act. When such a power by way of conditional legislation is to be exercised by the delegate, a question may arise as to how the said power can be exercised. In such an eventuality if the satisfaction regarding the existence of condition precedent to the exercise of such power depends upon pure subjective satisfaction of the delegate; and (3) the exercise of conditional legislation would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefit of such an exercise

with a view to deprive the rival class of persons who otherwise might have already got statutory benefits under the Act and who are likely to lose the existing benefit because of exercise of such a power by the delegate. It was held that in first two categories of cases hearing the parties is not obligatory, however, in cases falling in the third category opportunity must be given to other class of persons to submit their material in rebuttal thereof submitted by the first party.

In our opinion, the facts of the present case would fall in the second categories of the above referred to, where power to partially withdraw the applicability of the Act of 1993 to a given set of cases or to a given class of persons who are otherwise admittedly governed by the Act, viz., the recovery case in the segment of ten to twenty lakh rupees. When such a power by way of conditional legislation is to be exercised by the delegate a question may arise as to how the said power can be exercised. In such an eventuality if the satisfaction regarding the existence of condition precedent to the exercise of such power depends upon pure subjective satisfaction of the delegate.

In **Harishankar Bagla and Another Vs. The State of Madhya Pradesh – (1955) 1 SCR 380** of the Supreme Court challenge was made to Sections 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946 on the ground that it was ultra vires of delegated legislation and the challenge was repelled. It was held that the Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in

the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct. It was further held that the legislature has laid down such a principle and that principle the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. The principle was clear and offered sufficient guidance to the Central Government in exercising its powers under Section 3. In other words, in considering the question whether guidance was offered to delegate the legislation to bring into operation the material provision of the Act by laying down the principle in that behalf, the court considered the statement of policy contained in the preamble to the Act as well as the material provisions of Section 3 itself. This decision provides a sufficient guidance that if reasonable and clear statement of policy underlying the provisions of the Act can be found either in the Act itself or in its preamble or in the statement of objects and reasons, no part of the Act can be challenged on the ground of delegated legislation by suggesting that the question of policy has been left to the delegate.

The statement of objects and reasons given in the Act of 1993 clearly demonstrates that the banks and financial institutions at present have been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narashimham recommended the setting up of the

Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. In 1981 a Committee under the Chairmanship of Shri T. Tiwari examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. It has been noted in the statement of objects and reasons that on 30.09.1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs.5622 crores in dues of Public Sector Banks and about Rs.391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilization and recycling of the funds for the development of the country.

We may refer to the judgment of the Supreme Court in the **Consumer Action Group and Another Vs. State of Tamil Nadu and Others – (2000) 7 SCC 425**, wherein it was held that not only "preamble and objects and reasons" of the Act clearly indicate its policy but it is also revealed through various provisions of the enactment. In that case, the constitutional validity of Section 113 of the Tamil Nadu Town and Country Planning Act, 1971 was challenged as being ultra vires Articles 14 and 21 of the Constitution of India. Following observations of the Supreme Court in this behalf are quite relevant to quote:-

"The catena of decisions referred to above concludes unwaveringly in spite of very wide power being conferred on delegatee that such a section would still not be ultra vires, if guideline could be gathered from the Preamble, Object and Reasons and other provisions of the Acts and Rules. In testing validity of such provision, the courts have to discover, whether there is any legislative policy purpose of the statute or indication of any clear will through its various provisions, if there be any, then this by itself would be a guiding factor to be exercised by the delegatee. In other words, then it cannot be held that such a power is unbridled or uncanalised. The exercise of power of such delegatee is controlled through such policy. In the fast changing scenario of economic, social order with scientific development spawns innumerable situations which Legislature possibly could not foresee, so delegatee is entrusted with power to meet such exigencies within the in built check or guidance and in the present case to be within the declared policy. So delegatee has to exercise its powers within this controlled path to subserve the policy and to achieve the objectives of the Act. A situation may arise, in some cases where strict adherence to any provision of the statute or rules may result in great hardship, in a given situation, where exercise of such power of exemption is to remove this hardship without materially effecting the policy of the Act, viz., development in the present case then such exercise of power would be covered under it. All situation cannot be culled out which has to be judiciously judged and exercised, to meet any such great hardship of any individual or institution or conversely in the interest of society at large. Such power is meant rarely to be used. So far decisions relied by the petitioner, where the provisions were held to be ultra vires, they are not cases in which court found that there was any policy laid down under the Act. In **A.N. Parasuraman and Others Vs. State of Tamil Nadu – (1989) 4 SCC 683**, the Court held Section 22 to be ultra vires as the Act did not lay down any principle or policy. Similarly, in **Kunnathat Thathunni Moopil Nair etc. Vs. State of Kerala and Another – AIR 1961 SC 552**, Section 7 was held to be ultra vires as there was no principle or policy laid down."

The Supreme Court in **Prabhudas Damodar Kotecha and Others Vs. Manhabala Jeram Damodar and Another – (2013) 15 SCC 358**, held that the objects and reasons as such may not be admissible as an aid of construction to the statute but

it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time of introduction of the bill and the extent and urgency of the evil which was sought to be remedied. It is a key to unlock the mind of legislature in relation to substantive provisions of statutes and it is also well settled that a statute is best interpreted when we know why it was enacted.

The Supreme Court in **Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla – (2016) 3 SCC 619**, held that the principle of 'purposive interpretation' or 'purposive construction' is based on the understanding that the Court is supposed to attach that meaning to the provisions which serve the 'purpose' behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the Court is supposed to realise the goal that the legal text is designed to realise.

In **Rakesh Kumar Paul Vs. State of Assam – (2017) 15 SCC 67** the Supreme Court held that while interpreting any statutory provision, it has always been accepted as a golden rule of interpretation that the words used by the legislature should be given their natural meaning. Normally, the courts should be hesitant to add words or subtract words from the statutory provision. An effort should always be made to read the legislative provision in such a way that there is no wastage of words and any construction which makes some words of the statute redundant should be avoided. No doubt, if the natural meaning of the words leads to an interpretation which is contrary to the objects of the Act or makes the provision unworkable or highly unreasonable and arbitrary, then the Courts either add words or subtract words or

read down the statute, but this should only be done when there is an ambiguity in the language used. The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. The cardinal rule of construction of statutes is to read the statutes literally by giving to the words their ordinary, natural and grammatical meaning.

The Supreme Court in **All Kerala Online Lottery Dealers Association Vs. State of Kerala and Others – (2016) 2 SCC 161**, held that in a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made, for a modern legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words, used to take in new facts and situations, if the words are capable of comprehending them. An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention, held the Supreme Court.

We have stated at the outset that we are not examining the constitutional validity of Section 1(4) of the Act of 1993 as the vires thereof have not been challenged in the present writ petition.

Therefore we have to only find out whether the Central Government could, by issue of notification, specify any amount more than ten lakh rupees as the threshold value of the recovery claims to be filed before the Tribunals. The Parliament in Section 1(4) has, rather than saying in positive terms, used the negative terminology by stipulating that the provisions of the Act shall not apply where the amount of debt due to any bank of financial institution is less than ten lakh rupees or such other amount being not less than one lakh rupees, as the Central Government may, by notification, specify. Considering the statement of the objects and the reasons and the purpose with which the Tribunals were/are set up, we find that the Central Government has sufficient reasons for enhancing that limit to twenty lakh rupees. Stand of the Central Government before this Court is that as per the data provided by the Tribunals across the country, 9128 new Original Applications have been filed by the banks in the segment of ten to twenty lakh rupees within a period of six months with effect from 01.01.2018 up to 30.06.2018, which is about 41% of the total of 22,360 Original Applications filed during this period. But in terms of the value, the Original Applications of ten to twenty lakh rupees account for only about 5% of the total value of the recovery claims in Original Applications filed for the period. Further as per the data provided by various Debts Recovery Tribunals on 30.06.2018, there were 38,376 Original Applications pending in the Tribunals where the suit amount is between ten to twenty lakh rupees. This segment accounts for 38% of the total number of the pending Original Applications, though, in terms of value, this segment accounts for only 4%. Evidently the data obtained from

various Tribunals show that despite significant rise in the disposal rate year by year, pendency is increasing in the Tribunals due to filing of small value cases. The Tribunals were not being able to focus on clearing the higher value cases, which would otherwise have led to a significant recovery of public money.

Stand of the respondent Union of India is also that as per the data received from various public sector banks, more than 80% Non Performing Assets (NPAs) cases between ten to twenty lakh rupees are fully secured, so they have recourse to action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002') for recovery of such NPAs. Such small value cases also have alternate recourse to one time settlement by banks under their schemes or referring the case to Lok Adalats. If the minimum pecuniary limit is enhanced, then the banks can also approach Civil Courts for the recovery of amount involving amount upto twenty lakh rupees. Raising of pecuniary limit would further speed up the recovery process as the Tribunals would be focused in recovering the cases with recovery amount of more than twenty lakh rupees. The Civil Courts would not be burdened of many additional cases as alternate means such as SARFAESI action, one time settlement and Lok Adalats, etc. Raising of pecuniary limit by issuing the notification does not in any way affect the provisions of the Act of 2002. The Act of 1993 is a separate Act under which recovery of dues is initiated by filing of Original Application with the Tribunals by filing the securitisation application under Section 17 of the Act of 2002. There is no pecuniary limit assigned for

filing of securitisation application before the Tribunal under the Act of 2002.

Above analysis clearly shows that the substantial energy and resources of the large number of Tribunals across the country is being consumed for the segment of the recovery cases having value between ten and twenty lakh rupees, which although account for 41% of the total pendency but on the present scale account only 5% of the total value of the recovery claims. The notification issued by the Central Government raising the limit of ten to twenty lakh rupees is therefore intended to achieve the object with which the Tribunals were set up as would be evident from the statement of objects and reasons as also preamble of the Act of 1993. We are conscious of the fact that Section 1(4) of the Act of 1993 has not indicated any outer threshold value of the claim upto which the limit could be raised but we see no reason to enter into that aspect firstly because the validity of Section 1(4) of the Act of 1993 has not been challenged in the present writ petition and secondly we are satisfied with the reasons given by the Central Government that enhancing the threshold limit for filing claims before the Tribunals to twenty lakh rupees, cannot be considered excessive. Even otherwise, the worth of ten lakh rupees in the year 1993 when the Act was introduced, due to price inflation, was Rs.49.23 lakh in the year 2017, meaning thereby, the value of one rupee in 1993 stood reduced to approximately twenty paisa in 2017. Even when the constitutional validity of Section 1(4) of the Act of 1993 has not been challenged in the present writ petition, we find that sufficient guidelines are available in the Act of 1993 by way of its preamble, statement of

objects and reasons, which provide ample justification for the decision of the Central Government for raising the threshold limit of ten lakh rupees to twenty lakh rupees.

In view of the above discussion, the present writ petition fails and is hereby dismissed.

(NARENDRA SINGH DHADDHA),J (MOHAMMAD RAFIQ),J

//Jaiman//