REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4029 OF 2010
(@ SLP (C) No. 3883 of 2008)

Eureka Forbes Limited ….Appellant

Versus

Allahabad Bank & Ors. …Respondents

JUDGMENT

Swatanter Kumar, J.

1. Leave granted.

2. While pressing into service the definition of the word 'debt' appearing in Section 2 (g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short as the 'Recovery Act'), it is vehemently contended before us that the Debt Recovery Tribunal (for short the 'Tribunal') lacks inherent jurisdiction to entertain and decide the claim of the

Bank against the appellant. The appellant was neither a borrower nor was there any kind of privity of contract between the two. As such, money claimed from them was not a 'debt' and, therefore, rigors of the recovery procedure under the provisions of the Recovery Act could not be enforced against the appellant. This is a submission which, at the first blush, appears to be sound and acceptable. But, once it is examined in some depth and following the settled canons of law, one has to arrive only at a conclusion that the contention is without any substance and merit. At the very outset, as a guiding principle we may refer to the maxim '*a verbis legis non est recedendum*' but before we proceed to examine the merit or otherwise of the principal contention raised before us, it will be necessary for us to refer to the basic facts giving rise to the present appeal, particularly, in view of the fact that it has a wretched and long history which began in the year 1988.

FACTS

3. Appellant is a company duly incorporated under the provisions of the Companies Act, 1956, while Respondent No. 1, Allahabad Bank is a body constituted under the Banking

Companies (Acquisition and Transport of Undertakings) Act, 1976. Respondent No. 3 in the present appeal is a proprietorship firm of Respondent No. 2. The appellant company is stated to have entered into an agreement on 16th August, 1983 with respondent Nos. 2 & 3, granting licence in their favour to use premises at Jainkunj at Goragachha Road, Kolkata (hereinafter referred to as 'the premises') for a consideration of Rs.12,000/- payable to the appellant, along with the plant and machinery as well as their trade mark "OSBOURNE". It is further the case of the appellant that they had no knowledge of the fact that, respondent Nos. 2 & 3 had availed certain cash credit facility and had hypothecated their raw materials, semi-finished and finished products to Bank. However, on or about 28th February, 1987, the said respondents had requested the appellant to take over the possession of the said premises along with the closing stock lying therein. This was so requested because respondent Nos. 2 & 3 had not paid the licence fee for the use and occupation of the premises, goods etc. as agreed and further vide letter dated 23rd July, 1987, they stated that appellant could sell the stocks as well as

lathe machine lying in the factory premises and adjust the sale proceeds thereof towards the arrears of licence fee. After taking possession of the factory premises, the appellant prepared an inventory of the stock in possession and as alleged by them, they had no knowledge that these stocks had been hypothecated by the said respondents in favour of the Bank. The letter dated 7th August, 1987 has been annexed by the appellant in support of such averment. It appears from the record that the respondent Bank vide its letter dated 21st August, 1987 wrote to respondent Nos. 2 & 3 raising an issue as to how the possession of the stocks and machinery was given to the appellant. This was done in response to the letter of respondent Nos. 2 & 3 dated 18th August, 1987 and copy thereof was sent to the appellant while referring to the letter dated 7th August, 1987 addressed by the appellants to the other respondents. It will be useful to reproduce the relevant extract of the letter dated 21st August, 1987 which reads as under:

> "We acknowledge receipt of your letter dated 18.8.1987 along with enclosures.
>
> In this regard we fail to understand as to how you have permitted M/s Eureka Forbes Limited to take possession of your factory at 1,

> Goragacha Road, Kolkata – 700 043, the stocks and machineries of which are already hypothecated to us. And again you are advising us not to visit the factory at the moment which we are requesting you to do the same reputedly. Since April, 1986, you are also not submitting the stock statement and you have virtually stopped all your banking operations through us. Now we observe from the stock statement forwarded to us as enclosure that there are good amount of stock still lying at the factory."

4. To the above letter, the appellant responded vide its reply dated 23rd September, 1987 saying that the factory belongs to them and they had given the same on licence to respondent No. 3 and when the possession was handed over back to them certain stocks and machinery belonging to the respondent No. 3 were lying in the factory. They had made a specific request that these should be sold and adjusted towards the licence fee and the surplus money, if any, should be refunded to them. The respondent Bank claimed that they had a charge over the movable assets, in particular, the CTC machine which appellant had disposed off. For the sale of CTC machine, they had issued an advertisement on 12th March, 1988 and the same was sold for Rs.1,48,975/-.

5. The Bank filed a suit in the District Court at Alipore against the present appellant and respondent Nos. 2 & 3 claiming a sum of Rs.22,11,618.62. In this suit, the present appellant filed a written statement making a preliminary objection that there was no privity of contract between the Bank and the present appellant. That it was not a borrower of the Bank and had no dealings with them as such, the suit was barred for misjoinder of parties and in fact no suit could lie against the present appellant. The plea of suit being barred by time, the principles of estoppel, waiver and acquiescence was also taken. It was stated on merits, that neither they were aware of any transaction between plaintiff Bank and respondent Nos. 2 & 3 nor of any charge over the machinery and equipment etc. The appellant denied the allegations made against them. Most of the paragraphs were denied for want of knowledge and emphasis was laid only on the above stated two averments. Appellant also averred that the Bank was trying to cover up lapses of its own officials by pressurizing them. It could not have accepted, as security, the factory or machinery as it was owned by the appellant and it had not given any consent for

that purpose. This suit came to be transferred after the provisions of the Recovery Act came into force in the year 1994. Upon transfer it was numbered as T.A. No. 15/1994. The appellant was served with a notice from the Tribunal and it appointed one M/s Mallick and Palit as its Advocate to appear and pursue the case on its behalf. The appellant did not appear before the Tribunal and after some time the proceedings were carried on in their absence. The evidence was recorded and finally an ex-parte judgment was passed against the appellant on 15th June, 1995. In furtherance to the ex-parte judgment, a Recovery Certificate No. 48 of 1995 was issued by the competent authority under the provisions of the Act on 30th June, 1995. The appellant claims to have taken steps for setting aside the ex-parte judgment. They filed a writ petition before the High Court of Kolkata, (being Writ Petition No. 1804 of 1995), challenging the constitutional validity of the provisions of the Recovery Act and also prayed for stay of execution of the ex-parte judgment dated 15th June, 1995. An interim order dated 3rd November, 1995 was passed in favour of the appellant directing that the execution proceedings should go on, however

no final order be passed without the leave of the Court. The Tribunal vide its Order dated 4th March, 1996, appointed a receiver to prepare an inventory of hypothecated goods and a warrant of attachment was also issued. The High Court of Kolkata, again on application filed by the appellant directed the receiver only to make inventory of the goods and not to take any further action. During the pendency of these proceedings, the Recovery Officer upon further application by the respondent Bank, directed the receiver to make inventory of all the properties vide its Order dated 17th August, 1996. This order was challenged by the appellant before the Calcutta High Court which stayed further proceedings.

6. According to the appellant, it was advised to initiate proceedings to set aside the ex-parte decree and Recovery Certificate and hence an application was filed before the Tribunal for recalling the ex-parte order. Along with this, an application for condonation of delay was also filed. Consequent upon the dismissal of the application for condonation of delay, the appellant filed an appeal before the Debt Recovery Appellate Tribunal (for short the 'Appellate

Tribunal') against the order dated 19th August, 1999, passed by the Tribunal. The same was also dismissed by the Appellate Tribunal vide its judgment dated 1st June, 2001. This again was assailed before the High Court under Article 227 of the Constitution of India. The same was also dismissed by the High Court of Kolkata vide Order dated 28th November, 2001. Still unsatisfied, the appellant filed a Special Leave Petition before this Court, being SLP (C) No. 7883 of 2002 against the Order of the High Court of Kolkata which was dismissed as withdrawn by this Court vide Order dated 26th April, 2002. In other words, the Order of the Tribunal declining to set aside the ex-parte decree attained finality. The Revision Petition filed by the appellant before the High Court of Kolkata also came to be dismissed finally vide Order dated 2nd April, 2003. In furtherance to its zeal to somehow get the ex-parte decree set aside, the appellant preferred an appeal before the Appellate Tribunal against the order of the Tribunal dated 15th June, 1995. The Order dated 16th April, 2004 of the Appellate Tribunal was challenged before the learned Single Judge of the High Court. In those proceedings, an application for amendment to bring the

subsequent events on record, was filed which was dismissed by the learned Single Judge vide Order dated 11th June, 2004. Against this Order, an appeal was filed before the Division Bench of Kolkata High Court which also met the same fate. However, the Division Bench while dismissing the appeal observed that the Order passed by the learned Single Judge was correct in law but it would not prevent the appellant from resorting to any remedy which is available to it in accordance with law.

7. In the Appeal preferred by the appellant, the Appellate Tribunal vide its Order dated 15th July, 2003 directed the appellant to deposit a sum of Rs.5,00,000/- as condition precedent for entertaining the said appeal. This sum was deposited and a reply affidavit to this application was filed on behalf of the Bank. Vide Order dated 16th April, 2004, the Appellate Tribunal dismissed the application for condonation of delay in filing the appeal. The order dated 16th April, 2004 of the Appellate Tribunal was challenged in a Civil Revision Application before the High Court of Kolkata. The High Court vide its interim Order dated 11th June, 2004 directed the

appellant to deposit a sum of Rs.15,54,118.62 as a condition for hearing the appeal and the same was deposited. This application was against the interim order and the appeal remained pending before the Chairperson of the Appellate Tribunal. Finally the appeal was allowed vide Order dated 28th December, 2006 by the Appellate Tribunal. While setting aside the ex-parte decree the Appellate Tribunal held as under:-

> "Having said all that, to my mind, the net result is, the ex-parte decree in question passed against the appellant, Eureka Forbes Ltd. by the Debts Recovery Tribunal, Calcutta, is without jurisdiction and therefore, the appeal must succeed. Consequently, the entire sum of money appropriated by the respondent-bank as per orders of the Hon'ble Court in C.O. No. 1568 of 2004 will be refundable together with interest at the lending rate also as per the said orders of the Hon'ble Court.
>
> Accordingly, the decree in question dated 15th June, 1995 in T.A. 15 of 1994 passed by the Debts Recovery Tribunal, Calcutta, and certificate in pursuance thereof as against the appellant, Eureka Forbes Ltd., is hereby set aside. The entire sum appropriated by the respondent bank in terms of the orders of the Hon'ble Court in C.O. No. 1568 of 2004 be refunded to the appellant by the bank together with interest at the lending rate within a period of three months from date. There shall be no orders as to costs."

8. Respondent Bank challenged the Order of the Appellate Tribunal under Article 227 of the Constitution of India being C.O. No. 554 of 2007, before the learned Single Judge of the Kolkata High Court which vide its judgment dated 12th October, 2007, restored the judgment and the order of the Tribunal. Aggrieved therefrom, the appellant preferred the appeal before the Division Bench of Kolkata High Court which, vide its Order dated 11th February, 2008, dismissed the appeal and sustained the Order of the learned Single Judge giving rise to the present Special Leave Petition.

9. The challenge to the impugned orders is *inter alia* on the ground that, Tribunal had no jurisdiction to entertain such an application filed on behalf of the Bank as there was no privity of contract between the appellant and the Bank. Besides the issue of jurisdiction, the stand taken is that the Bank had not proved on record by way of any evidence that anything is due to it from the appellant. All the witnesses examined on behalf of the Bank have stated nothing to the above mentioned effect. In any case, in the subsequent proceedings the decree should have been set aside, as nothing in law could be stated to be due

from the appellant. In the suit, which was decreed ex-parte by the Tribunal on 15th June, 1995, it was specifically averred in the plaint that, Respondent No. 3 along with other defendants illegally, erroneously, arbitrarily and whimsically had taken possession of the entire stock, machinery, equipments etc. without knowledge of the respondent Bank. The respondents had not allowed inspection of the factory and verification of the stock and other requisite elements. In fact, the appellant has misguided the Bank while informing vide their letter dated 18th August, 1987, that the workers had forcibly occupied the factory. Reference was also made to the fact that some stocks, plant and machine belonging to respondents had been given to the appellant for sale etc. as per the agreement between the parties. The goods, stocks were hypothecated to the Bank and according to the Bank, all the defendants in the suit were liable to pay the dues of the Bank. On this premise, the Bank prayed for decree for the entire amount and also interest @ 18.05% per annum. A specific prayer was made that the Bank has a valid and subsisting charge over the properties of defendant Nos. 1 & 2 for the due repayment to it. A decree for realization of

hypothecated goods by and under the direction of the Court was also prayed for. We have already noticed above that there was denial of the allegations made in the plaint.

Merits of the case relatable to the factual matrix

10. The main stand of the appellant was in relation to the jurisdiction and lack of knowledge of the fact that the goods in stock were hypothecated to the Bank along with the plant and machinery. The two important documents, dated 16th August, 1983 and 28th February, 1987, which have been placed on record, are of some significance. The agreement dated 16th August, 1983 states the conditions of the leave and licence agreement between respondent Nos. 2 & 3 and the appellant. It was indicated therein that they could use the plant and machine in the premises and it was for a period of three years with a deposit of Rs. 1,00,000/- and Rs.12,000/- per month as fee. Under Clause 6, the stocks at the relevant time were to be sold for a consideration of 0.75 lakhs and they were entitled to use the trade mark. However, vide letter dated 28th February, 1987, which is after the expiry of a period of more than three years, it

was indicated by Respondent Nos. 2 & 3 to the appellant that, they wanted to give back possession of factory and there were stocks of about Rs.7,00,000/- which included raw material, semi-finished and finished goods, lathe worth Rs.1,15,000/- which could be sold to a subsequent licencee. Relevant paragraphs of this letter can be usefully reproduced at this stage:

> "2. We are having stocks worth about Rs.7 lacs which includes raw material, semi-finished & finished goods. We would be grateful if your subsequent licencee agree to take oil the stocks plus one Lathe worth Rs.1,15,000/- as we would be willing to negotiate with them.
>
> 5. We would be pleased to settle our account with you as soon as the factory stocks are sold to your future licences and also the worker's retrenchment dues. We state this as we have suffered heavy losses due to continues agitations and non-payment of due by our customers and also cancellation of our orders."

11. Another letter written by Respondent Nos. 2 & 3 to the appellant on 23rd July, 1987 referred to certain telephonic conversation. It was specifically recorded in it that possession of the factory will be handed over on 31st July, 1987. It was also stated that there was financial crisis and that the stocks

worth Rs.7,00,000/- and the lathe worth Rs. 1,15,000/- etc. could be sold and they will not be able to pay any licence fee in future. On 7th August, 1987, the possession of the premises was taken by the appellant and a list had been prepared, copy of the list placed on record shows the physical stock as on 7th August, 1987 and it contains bearings, plumber block, bearing of milling MC, GM Brass and Segment, old Osborn, C.I. of Milling M.C., C.I. components, AC IMCA machinery etc. It is interesting to note that all these correspondences and conversations between the parties had been without any intimation to the respondent Bank. In fact, all this had been done behind the back of the Bank. Besides this, the Bank had led oral and documentary evidence in support of its claim. The Bank had written the letter dated 21st August, 1987 in response to the letter of Respondent Nos. 2 & 3 dated 18th August, 1987, but the letter dated 18th August, 1987 has not been placed on record. However, vide letter dated 21st August, 1987 copy whereof was sent to the appellant as well, the bank had informed them that it had given the financial assistance to respondent Nos. 2 & 3 and the Bank was having charge over

the stocks and machinery which had been hypothecated to the Bank. The Bank further expressed surprise as to how the appellant had taken possession of the unit. Another relevant aspect of the matter would be the conduct of the present appellant. We have serious issues that the appellant, after taking possession of the premises, had not come to know about the goods being hypothecated to the Bank. Advertisement for the sale of machinery was issued as late as on 12th August, 1988. In other words, they had sold goods, even machines, like CTC at a throw away price, even after having complete knowledge about the hypothecated goods. Thereafter, an ex-parte decree was passed, however they did not take any steps to get the same set aside, except when a recovery certificate had been issued by the competent authority. Thereafter, their prayer for setting aside ex-parte decree was rejected consistently by all the courts. When the High Court of Kolkata was dealing with the Revision Petition filed against the Order dated 1st June, 2001, passed by the Appellate Tribunal, the Court had specifically noticed the conduct of the appellant and had observed as under:-

"After hearing Mr. Mitra appearing on behalf of the petitioner and after going through the material on record I fully agree with the Tribunal below that the present proceedings have been initiated by the petitioner Balu: 10 with the sole object of delaying the execution of a decree passed in the year 1995. It has been rightly pointed out by those Tribunals that after filing written statement in the suit in 1989 till the decree was passed in 1998 the Tribunal below, the petitioner took no step in the original proceedings. There is no scope of doubt that notice of the proceedings was served through the Tribunal and the petitioner entered appearance through a lawyer. No reason has been assigned in the application what prevented the learned advocate-on record of the petitioner from contesting the proceedings before the Tribunal. In paragraph 5 of the application before the Tribunal it has simply been state that "although the petitioner engaged Mr. H.P. Balu of M/s. Mallick & Palit, solicitors to look after the petitioner's interest in the said matter, the said advocates chase not to appear in the proceedings for and on behalf of the petitioner and consequently the certificate was passed by the tribunal in favour of the plaintiff. It appears that the very same advocate-on-record has preferred writ application before this Court challenging the vires of the act and had also filed subsequent application under Article 227 of the Constitution of India impugning order passed in execution proceedings and the petitioner has obtained interim orders in those proceedings before this court. It is not the case of the petitioner that it has abandoned those proceedings and by the advice of the new lawyer has confined itself to the present proceedings. It appears that although those matters are still pending, the petitioner by filing instant proceedings has tried to find out an additional avenue for stalling the execution proceedings."

12. After having lost upto this Court, another round of litigation started, claiming it to be in furtherance to the Order of Kolkata High Court, granting them liberty to take steps in accordance with law. It is in furtherance of this observation of the High Court that, the proceedings again started from the Appellate Tribunal and now the present petition has been filed before this Court. We have already noticed that owing to the sale of goods, complete knowledge, that the goods were hypothecated to the Bank is attributable to the appellant and hence, they could not have sold the said goods without permission of the Bank. Admittedly nothing of this kind was done and the Bank was kept in dark.

13. The application for setting aside the ex-parte decree had been filed by the appellant along with an application for condonation of delay in filing the said application. However, the application for condonation of delay was rejected and subsequently the ex-parte decree was not set aside. This order of the Tribunal was neither interfered by the High Court nor by this Court in a Special Leave Petition preferred by the

appellant. In view of the observations made by the High Court in the order, the appellant filed another application for setting aside the decree on the ground that the Tribunal had no jurisdiction. The said application came to be allowed by the Appellate Tribunal which accepted the contention raised on behalf of the appellant. The reasoning recorded in the judgment of the Tribunal was that, it was a claim for damages in tort and was not a debt, and also that it was beyond the scope of the jurisdiction vested in the Tribunal under Section 17(1) of the Recovery Act, as there were insufficient allegations or evidence. No liability in terms of the debt can be fastened on the appellant. This reasoning of the Tribunal was set aside by the High Court of Kolkata in the impugned judgment and observed that, even claim for damages would fall well within the jurisdiction of the Tribunal in the facts of the case, and particularly, when the averments remained uncontroverted and no evidence was led by the appellant. The hypothecated goods at the place of business of Respondent Nos. 2 & 3 were there at the time of handing over of the possession of the factory back to the appellant, and this fact can hardly be disputed on record.

A finding was recorded in the proceedings that appellant was an intermeddler and there was collusion between the appellant and Respondent Nos. 2 & 3. Based on this finding, it was further held that the case of the Bank was fully covered under the expression "debt", "any liability", "any person" and accordingly, the Court set aside the judgment of the Tribunal. In the light of the facts and circumstances of the case, we are unable to find the stand of the High Court to be erroneous. Of course, to some extent, the entire suit could not have been decreed against the appellant. The respondent Bank was entitled to a limited relief, vis-à-vis, its hypothecated stocks, goods and machinery, if any. It was not even the case of the Bank before the Tribunal that the present appellant was a borrower and in discharge of its final liability towards Bank the entire suit was liable to be decreed. The cause of action in favour of the Bank and against appellant, at best, could be limited to the hypothecated stock and goods, as beyond that, there is no averment in the plaint which would justify grant of any larger relief in their favour. We would shortly discuss the legal aspects as well as the reasoning in law, in this regard. The

Bank has examined merely four witnesses in support of its case. There is no statement or note of any of these witnesses for imposition of any liability upon the appellant, except to the extent of goods hypothecated; such a conclusion can even be drawn from the letters dated 28th February, 1987, 23rd July, 1987, 7th August, 1987 and 21st August, 1987. The correctness of these letters has never been disputed by any of the parties and it was admitted by the appellant that the advertisement for sale of goods was issued on 12th March, 1988. Certainly and apparently, the appellant had complete knowledge, that the entire stock, goods, machinery etc. had been hypothecated to the Bank. Certainly, there has been a definite lapse on the part of the Bank, as the loan facility was granted in the year 1984, i.e. subsequent to the execution of the leave and licence agreement dated 16th August, 1983. It is obvious from the facts appearing on record that the loan has been sanctioned in a most casual and undesirable manner without even verifying the basic securities of respondent Nos. 2 & 3.

14. Besides the fact that the present appellant had earlier raised all the pleas in their application for setting aside the ex

parte decree which was rejected by the Tribunal, High Court as well as this Court, it also needs to be noticed that except making vague denials in the written statement, which they had filed before the Tribunal at the relevant point of time, they had raised no specific or concrete defence in regard to the sale of hypothecated goods by them. The fact, as already noticed, cannot be disputed that the goods in question which were hypothecated or were under the charge of the Bank have been sold by the appellant. The advertisement issued by them clearly shows that they had invited offers for sale of CTC machines and spares, which itself demonstrates that a number of machines and other goods have been sold by them. It is an accepted precept of appreciation of evidence that a party which withholds from the Court best evidence in its power and possession, the Court would normally draw an adverse inference against that party. In any case, the bona fide of such a party would apparently be doubted. The appellant was possessed of best evidence in regard to the goods of which they had taken possession on 7th August, 1987, in fact were hypothecated to the Bank. These goods including machines

were sold by the appellant prior and subsequent to the issue of the advertisement dated 12th March, 1988. Thus, the best evidence in this regard, was obviously in appellant's power and possession which they did not produce before the Court despite prolonged litigation. As such, we would have no hesitation in drawing some adverse inference against the appellant in this behalf. Another ancillary factor, which the Court has to take into consideration is that, the value declared by respondent Nos. 2 and 3 in relation to stocks, has not been denied specifically, either in correspondence or in the pleadings by the appellant. In the letter dated 28th February, 1987 value of goods worth Rs. 7,00,000/- and lathe machine worth Rs. 1,15,000/- was alleged to be lying in the factory, in addition to other materials. The inventory which was annexed to the letter of 7th August, 1987 refers to various components, parts, bearings etc. but does not refer to CTC machines. Admittedly, the appellants have sold these machines in furtherance to the advertisement dated 12th March, 1988. In short, an amount which cannot be disputed, as is evident from the documentary and oral evidence on record is, Stock A, Stock lying in the premises, 7 lacs lathe machine,

Rs.1,15,000/- CTC machine, as sold by the appellant as per their own version, the CTC machine which was sold by the appellant for a sum of Rs. 1,48,975/-, thus, totaling up to Rs. 9,63,975/-. The respondent Bank would be entitled to receive the interest at the rate of 6% per annum from 14th March, 1988 till the date of payment of the amount. We are awarding the same rate of interest which has been awarded by the Tribunal and was accepted by the Bank.

15. It appears that the Bank is acting in a manner which is ex facie not in consonance with the commercial principles and in a most casual and irresponsible manner. The method in which the financial limits have been sanctioned to respondent Nos. 2 and 3 does not stand to reasoning. Admittedly, respondent Nos. 2 and 3 had no title to the property. What verification was done to the appraisal report has been left to imagination. The conduct of the appellant further creates some suspicion in the mind of the Court. The appellant took no remedial or bonafide steps even after it had admittedly come to know that the goods in question were hypothecated to the Bank. On the contrary, it issued advertisement in March, 1988 for sale of hypothecated

goods. On the face of this fact, they had no preferential right to sell the goods. In the letter dated 21st August, 1987, they had been informed that possession of the property as well as the goods have been taken unauthorizedly. Even if it is assumed that certain amounts were due to the appellant from respondent nos. 2 and 3 on account of licence fee, still they could not have brushed aside the charge of the Bank over the goods and machinery in question. Also in the alleged leave and licence agreement, dated 16th August, 1983, there was no clause, at least none has been brought to our notice, that the appellant would have charge over the goods and machinery, in the event of default in the payment of licence fee. In other words, the charge of the Bank was binding upon the appellant. The inventory of the goods had been prepared and signed by the parties. In the letter dated 7th August, 1987, these facts were confirmed in furtherance to the correspondence exchanged between the parties from 28th February, 1987.

16. Ashok Kumar Goswami, Senior Manager, Allahabad Bank, who was examined as witness No. 1 on behalf of the Bank, has stated that the loans were advanced to Respondent

Nos. 2 & 3. According to him Exh. 7 is the agreement cum letter of hypothecation for packing credit advance under which the financial assistance was allowed to them. He also proved Exh. 11, statement of stock of finished goods, work in progress, raw-material and machinery executed by Respondent No. 2 for and on behalf of Respondent No. 3. The stocks statements were shown in Exh. 12, while Exh. 13, was a letter written by Respondent No. 2 on 29th May, 1984 to the Bank. He specifically stated that the hypothecated goods were handed over by Respondent Nos. 2 & 3 to the appellant behind the back of the Bank. Another witness, whose statement at this stage can be usefully looked into, is that of Sh. Sankar Chakraborty, PW-2. Besides stating the general facts of the case, this witness specifically stated, that the Bank had impleaded the appellant, as they had taken possession of hypothecated goods of the Bank and that, the appellant had written a letter to the Bank and they raised a specific claim against it.

17. From the above stated documentary evidence, it is clear that the parties had the knowledge of the fact that respondent nos. 2 and 3 enjoyed the financial assistance from the Bank and

the goods were hypothecated to it. Even as per the statement of respondent nos. 2 and 3, the appellant sold the hypothecated goods with complete knowledge. This included hypothecated stock worth Rs. 7,00,000/-, lathe machine of value of Rs. 1,15,000/-, in addition to CTC machine and other spares.

18. The goods in question, therefore, have been disposed off by the appellant either in collusion with respondent nos. 2 and 3 or at its own but with the knowledge that the goods were hypothecated to the Bank. Thus, to that extent, the liability of the appellant cannot be disputed.

LEGAL ASPECTS OF THE CASE:-

19. In continuation of the above factual matrix, now let us examine the principles of law which would be applicable to the facts and circumstances of the case and result thereof. There is, in fact, hardly any dispute before us that the goods in question had been hypothecated to the Bank. The appellant had complete knowledge of this fact, still it went on to sell the goods. The Bank had been negligent and, to some extent, irresponsible, in invoking its rights and taking appropriate remedy in accordance with law. Mere irresponsibility, on the

part of the Bank, would not wipe out the rights of the Bank in law. Without the consent of the Bank, no person can utilize the hypothecated goods for his own benefit or sale by the borrower or any person connected thereto. It is nobody's case that the Bank had consented to such sale. This Court in case of Indian Oil Corporation v. NEPC India Limited [(2006) 6 SCC 736] described the meaning of 'entrustment' in relation to hypothecation as follows:

xxxx xxxx xxxx xxxx

> "The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). The following denifitions of the term 'hypothecation' in P. Ramanatha Aiyar's Advanced Law Lexicon [3rd Edn. (2005), Vol. 2 pp. 2179 and 2180] are relevant:
>
> "Hypothecation—It is the act of pledging an asset as security for borrowing, without parting with its possession or ownership. The borrowers enters into an agreement with the lender to hand over the possession of the hypothecated assets whenever called upon to do so. The charge of hypothecation is then converted into that of a pledge and the lender enjoys the rights of a pledge.
>
> * * *
>
> 'Hypothecation' means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor, without

> delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property. [Borrowed from Section 2(n) of Scuritisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002]."

20. Physical domain over the hypothecated goods is no way a *sine qua non* for enforcing Bank's rights against the borrower. It was obligatory upon the appellant to deal with the goods only with the leave and permission of the Bank. Absence of such consent in writing would obviously result in breach of Bank's rights.

21. The next question of law, that we are called upon to consider, is the ambit and scope of provisions of Section 2(g) of the Recovery Act, on which the entire case of the parties hinges. We have already noticed that the appellant has argued with great vehemence that, there was no privity of contract and they were not covered under the definition of 'debt', and as such, recovery proceedings could not be initiated, much less, recovery could be effected from them under the provisions of the Act. Section 2(g) of the Recovery Act reads as under:

> "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;"

22. The Recovery Act of 1993, was enacted primarily for the reasons that, the Banks and financial institutions should be able to recover their dues without unnecessary delay, so as to avoid any adverse consequences in relation to the public funds. The Statement of Objects and Reasons of this Act clearly state that Banks and financial institutions at present, experience considerable difficulties in recovering loans and enforcements of securities charged with them. The existing procedure for recovery of dues of the Bank and the financial institutions block significant portion of their funds in un-productive assets, the value of which deteriorates with the passage of time. Introduction of similar procedure was suggested by the Tiwari Committee. The Act provided for the establishment of

Tribunals and Appellate Tribunals and modes for expeditious recovery of dues to the Banks and financial institutions.

23. In this background, let us read the language of Section 2 (g) of the Recovery Act. The plain reading of the Section suggests that legislature has used a general expression in contra distinction to specific, restricted or limited expression. This obviously means that, the legislature intended to give wider meaning to the provisions. Larger area of jurisdiction was intended to be covered under this provision so as to ensure attainment of the legislative object, i.e. expeditious recovery and providing provisions for taking such measures which would prevent the wastage of securities available with the banks and financial institutions.

24. We may notice some of the general expressions used by the framers of law in this provision :

a) any liability;

b) claim as due from any person;

c) during the course of any business activity undertaken by the Bank;

d) where secured or unsecured;

e) and lastly legally recoverable.

25. All the above expressions used in the definition clause clearly suggest that, expression 'debt' has to be given general and wider meaning, just to illustrate, the word 'any liability' as opposed to the word 'determined liability' or 'definite liability' or 'any person' in contrast to 'from the debtor'. The expression 'any person' shows that the framers do not wish to restrict the same in its ambit or application. The legislature has not intended to restrict to the relationship of a creditor or debtor alone. General terms, therefore, have been used by the legislature to give the provision a wider and liberal meaning. These are generic or general terms. Therefore, it will be difficult for the Court, even on cumulative reading of the provision, to hold that the expression should be given a narrower or restricted meaning. What will be more in consonance with the purpose and object of the Act is to give this expression a general meaning on its plain language rather than apply unnecessary emphasis or narrow the scope and interpretation of these provisions, as they are likely to frustrate the very object of the Act.

26. In the case of State of Gujarat and Ors. v. Akhil Gujarat Pravasi V.S. Mahamandal & Ors. [(2004) 5 SCC 155], this Court was concerned with the question of payment of taxes in relation to the provisions of the Bombay Motor Vehicle Tax Act, 1958. The Court while interpreting the scope of the entries in the legislative lists held that, they should be construed widely and general words used therein must comprehend ancillary or subsidiary matters relating to Schedule VII, Articles 245 and 246. The Court held as under:-

> "In interpreting the scope of various entries in the legislative lists in the Seventh Schedule, widest-possible amplitude must be given to the words used and each general word must be held to extend to ancillary or subsidiary matters which can fairly be said to be comprehended in it. The entries should, thus be given a broad and comprehensive interpretation. In order to see whether a particular legislative provision falls within the jurisdiction of the legislature which has passed it, the Court must consider what constitutes in pith and substance the true subject-matter of the legislation and whether such subject-matter is covered by the topics enumerated in the legislative list pertaining to that legislature."

27. Again in the of case of Raman Lal Bhailal Patel & Ors. v. State of Gujarat [(2008) 5 SCC 449], this Court was dealing

with the word 'person' appearing in the provisions of Gujarat Agricultural Land Ceiling Act, 1960. The expression 'person' was defined with the inclusive definition that a person includes a joint family. The Court held that, where the definition is inclusively defining the word, there, the legislative intention is clear that it wishes to enlarge the meaning of the word used in the statute and that such word must be given comprehensive meaning. In law, the word 'person' was stated to be having a slightly different connotation and refers to any entity that is recognized by law as having rights and duties of human beings.

28. In the case of Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd. & Ors. [(2007) 6 SCC 236], this Court took the view that, the elementary rule of interpretation of statute is that the words used must be given their plain grammatical meaning, therefore, the Court cannot add something which the legislature has not provided for. Similar view was also expressed by another Bench of this Court in the case of Unique Butyle Tube Industries (P) Ltd. v. U.P. Financial Corporation and Ors. [(2003) 2 SCC 455], that the Court cannot write anything into the statutory provisions which are plain and

unambiguous. A Statute is an edict of the legislature. The language employed in a statute is determinative factor of legislative intent. The first and the primary rule of construction is that, the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said.

29. The learned counsel for the appellant has heavily relied upon the judgment of the United Bank of India v. Debt Recovery Tribunal & Ors. [(1999) 4 SCC 69], to contend that the general expression must receive general meaning and in light of this principle, the present proceedings could not have been initiated, much less, recoveries effected under the provisions of the Recovery Act. We shall shortly discuss the merit of this contention.

30. Before we advert to the discussion while applying these principles of interpretation to the provisions of Section 2 (g) of the Recovery Act, and also examine the merit of the contention raised on behalf of the respondent, it may be interesting to know as to how the word 'debt' has been defined and explained

by this Court in different judgments, with different context and under different laws.

31. Years back this Court in the case of P.S.L. Ramanathan Chettiar & Ors. v. O.R.M.P.R.M. Ramanathan Chettiar [AIR 1968 SC 1047], explained the expression 'debt' as defined in the Madras Agriculturists Relief Act, 1938. The Court held that the definition appearing in Section 3 (iii) of the Act, despite the fact that it specifically states that 'debt' would not include rent as defined in clause (iv), or 'Kanartham', as defined in Section 3 (1)(1) of the Malabar Tenancy Act, 1929, held that the definition is still of a very wide magnitude and would include 'any liability' due from an agriculturists with the specified expressions. The Court held as under:

> "'Debt' has been defined in Sec. 3 (iii) of the Act as meaning "any liability" in Cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree or order of a civil or revenue court or otherwise, but does not include rent as defined in Clause (iv), or 'Kanartham' as defined in Section 3 (1) (1) of the Malabar Tenancy Act, 1929."

In the case of Union of India v. Raman Iron Foundry [(1974) 2 SCC 231], this Court quoted as under:

> "The classical definition of 'debt', is to be found in Webb v. Stenton where Lindley, L.J. said: "… a debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation". There must be debitum in praesenti; solvendum may be in praesenti or in future – that is immaterial. There must be an existing obligation to pay a sum of money now or in future."

32. Still, in another case titled as State Bank of Bikaner & Jaipur v. Ballabh Das & Co. & Ors. [(1999) 7 SCC 539], the Court was concerned with the un-amended provisions of Section 2 (g) of the Recovery Act. The Court while setting aside the order of the High Court, while dealing with the word 'debt' followed by the words 'alleged as due', held as under:-

> "According to the definition, the term 'debt' means liability which is alleged as due from any person by a bank or a financial institutions or by a consortium of banks or financial institutions. It should have arisen during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force. The liability to be discharged may be in cash or otherwise. It would be immaterial whether the liability is secured or unsecured or whether it is payable under a decree or an order of any civil court or otherwise. However, it should be subsisting and legally recoverable on the date on which proceedings are initiated for recovering the same.
>
> The important words in the definition "alleged as due" have been overlooked by the High

> Court and, therefore, it has erroneously held that unless the amounts claimed by the Bank are determined or decided by a competent forum they cannot be said to be due and would not amount to "debt" under the Act. What was necessary for the High Court to consider was whether the Bank has alleged in the suits that the amounts are due to the Bank from the respondents, that the liability of the respondents has arisen during the course of their business activity, that the said liability is still subsisting and legally recoverable."

33. As already noticed, this judgment was pronounced by the Court while dealing with the un-amended provisions of Section 2 (g) of the Recovery Act. This section was amended by Act 1 of 2000 and the words 'alleged as due' stood substituted by the expression 'claimed as due' with effect from 17th January, 2000. This shows the intention of the legislature to significantly introduce definite expression and give emphasis to the claim of the Bank rather than, what is allegedly due or determinatively due to the Bank from its borrowers. In this case, the application of the Bank had been dismissed by the High Court on the ground that it was not maintainable as it was not covered under the definition of the word 'debt'. While setting aside the order of the High Court, this Court held that, the High Court had gone wrong in holding that the application

by the Bank was premature and till the Court determines the amount, such application could not be filed by the Bank. This Court clearly stated the dictum that, such application would be maintainable and the amount payable to the Bank does not have to be a determined sum under the provisions of the Recovery Act.

34. Similar contention had been raised before us on the strength of the judgment of this Court in the Case of United Bank of India (Supra) on behalf of the appellant. Firstly, we fail to understand as to what advantage the learned counsel appearing for the appellant wishes to draw from this judgment and secondly, this judgment has clearly returned the finding, even on the facts of that case, that application under the provisions of the Recovery Act was maintainable within the scope of Section 2 (g) of the Act. The Court held as under :

> "In view of the rival stands of the parties, the short question that arises for consideration is, as to whether the said claim of the plaintiff can be said to be a claim for recovery of debts due to the plaintiff as provided under Section 17(1) of the Act. The answer of this question in turn would depend upon the meaning of the expression "debt" as defined in Section 2(g) of the Act. Before we examine the two provisions referred to above, it is

to be borne in mind that the procedure for recovery of debts due to the banks and financial institutions which was being followed, resulted in a significant portion of the funds being blocked. To remedy the locking up of huge funds, the Financial Institutions Bill, 1993", which was passed by Parliament and the Act has come into existence.

The Act and the relevant provisions will have to be construed bearing in mind the objects for which Parliament passed the enactment. The prime object of the enactment appears to be 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.

In the case in hand, there cannot be any dispute that the expression "debt" has to be given the widest amplitude to mean any liability which is alleged as due from any person by a bank during the course of any business activity undertaken by the bank either in cash or otherwise, whether secured or unsecured, whether payable under a decree or order of any court or otherwise and legally recoverable on the date of the application. In ascertaining the question whether any particular claim of any bank or financial institution would come within the purview of the tribunal created under the Act, it is imperative that the entire averments made by the plaintiff in the plaint be looked into and them find out whether notwithstanding the specially-created tribunal having been constituted, the averments are such that it is possible to hold that the jurisdiction of such a tribunal is ousted. With the aforesaid principle in mind, on examining the averments made in the plaint, we have no hesitation to come to the conclusion that the claim in question made by the plaintiff is essentially one for recovery of a

> debt due to it from the defendants and, therefore, is the Tribunal which has the exclusive jurisdiction to decide the dispute and not the ordinary civil court."

35. As is obvious from the above recorded findings, the Court while referring to Section 2 (g), 17(1) and 31 (1) of the Recovery Act, observed that jurisdiction of the Civil Court was barred under the provisions of the Act and the suits or proceedings shall transfer to the Tribunal upon coming into force of the Recovery Act. The Court was primarily concerned with the matters being transferred from Civil Courts to Tribunal, still while referring to the provisions of Section 2 (g), held that the claim of the Bank was covered under the provisions of the Act. The suit, as instituted in the year 1991, had claimed various relief including the claim for damages. The objection raised was that, there was undetermined amount and other relief could not be referred to the Tribunal for adjudication. The suit was subsequently transferred to the Tribunal under the provisions of the Act and the Court while giving wide meaning to the expression 'debt', clearly held that, this expression was of liberal amplitude and there was occasion

for the Court to grant a restricted meaning. Thus, in our view, even the case of United Bank of India (supra) no way supports the submissions made on behalf of the appellant.

36. On the plain analysis of the above stated judgment of this Court, it is clear that the word 'debt' under Section 2 (g) of the Recovery Act is incapable of being given a restricted or narrow meaning. The legislature has used general terms which must be given appropriate plain and simple meaning. There is no occasion for the Court to restrict the meaning of the word 'any liability', 'any person' and particularly the words 'in cash or otherwise'. Under Section 2 (g), a claim has to be raised by the Bank against any person which is due to Bank on account of/in the course of any business activity undertaken by the Bank. In the present case, Bank had admittedly granted financial assistance to respondent nos. 2 and 3, who in turn had hypothecated the goods, plants and machinery in favour of the Bank. There cannot be any dispute before us that the goods in question have been sold by the appellant without the consent of the Bank. Respondent nos. 2 and 3 have hardly raised any dispute and resistance, to the claim of the Bank. In fact, even

before this Court there is no representation on their behalf. The documentary and oral evidence on record clearly established that the Bank has raised a financial claim upon the principal debtor, as well as upon the person who had intermeddled and/or at least dealt with the charged goods without any authority in law. Not only this, the appellant had sold the hypothecated goods and stocks by public auction, despite the fact the appellant had due knowledge of the fact that the goods were charged in favour of the Bank. Another aspect of this case which required to be considered by this Court is, what was intended to be suppressed by the legislature by enacting the Recovery Act, 1993 and thereafter, by amending various provisions, including Section 2(g) in the year 2000. Obviously, the mischief which was intended to be controlled and/or prevention of wastage of securities provided to the Bank, was the main consideration for such enactment. The purpose was also to prevent wrong doers from taking advantage of their wrong/mistakes, whether permissible in law or otherwise. These preventive measures are required to be applied with care and purposefully in accordance with law to ensure that the

mischief, if not entirely extinguished, is curbed.

37. Maxim Nullus commodum capere potest de injuria sua propria has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations. In the present case Respondent Nos. 2 & 3 and the appellant have acted together while disposing off the hypothecated goods, and now, they cannot be permitted to turn back to argue, that since the goods have been sold, liability cannot be fastened upon respondent Nos. 2 & 3 and in any case on the appellant. The Bench of this Court in the case of Ashok Kapil v. Sana Ullah (Dead) and Ors. [1996 (Vol. 6) SCC 342], referred to rule of mischief and while explaining the word 'building', held as under,:-

> "Stroud's Judicial Dictionary (Vol. I of the 5th Edition) states that 'what is a building must always be a question of degree and circumstances'. Quoting from Victoria City Corpn. v. Biship of Vancover Island (AC at p.390), the celebrated lexicographe commented that 'ordinary and natural meaning of the word building includes the fabric and the ground on which it stands". In Black's Law Dictionary (5th Edn.) the meaning of the building is given as " A structure or edifice enclosing a space within its walls, and usually, but no necessarily, covered with a roof". (emphasis

> supplied). The said description is a recognition of the fact that roof is not a necessary and indispensable adjunct for a building because there can be roofless buildings. So a building, even after losing the roof, can continue to be a building in its general meaning. Taking recourse to such meaning in the present context would help to prevent a mischief.

38. The learned counsel for the appellant also relied upon the judgment of the Gujarat High Court in the case of Bank of India v. Vijay Ramniklal [AIR 1997 Gujarat 75], in support of the contention, that claim of bank was not 'debt' within the meaning of Section 2(g) of the Act so as to give jurisdiction to the Tribunal. We are not impressed by this argument. Firstly, the judgment of the Gujarat High court is entirely on different facts and in that case an employee of the Bank had misappropriated the amount of the Bank, the Bank had instituted an application under the provisions of the Recovery Act. Rightly so it was held by the High Court, that it was not a 'debt' within the meaning of Section 2 (g) and, therefore, could not be tried before the Tribunal. We may state another illustration to demonstrate the case where the Tribunal may not have jurisdiction. Some persons commit a theft in the Bank

and take away the money and/or the goods hypothecated to the Bank or the goods in the custody of the Bank. Upon Bank's lodging a first information report (FIR) to the police, those persons are traced, arrested and tried in accordance with law for theft. In such a case, the Tribunal may not have jurisdiction to entertain and decide an application for recovery of money or value of goods in terms of Section 17 of the Recovery Act. That is neither the case here nor in any of the judgments which have been relied upon by the parties before us, except in the case of Gujarat High Court. In the case in hand, the goods were hypothecated to the Bank and the appellant admittedly had knowledge prior to the sale of the goods, that they were hypothecated to the Bank. If the contention of the appellant is accepted, it will amount to giving advantage or premium to the wrong doers. It would also further perpetuate the mischief intended to be suppressed by the enactment. This could completely defeat the very object and purpose of the Act. A party which had pledged or mortgaged properties in favour of the Bank, then would transfer such properties in favour of a third party. In the event, the Bank takes action under the

provisions of the Recovery Act, they would take the objection like the present appellant. This would tantamount to travesty of justice and would frustrate the very legislative object and intent behind the provisions of the Recovery Act. Therefore, such an approach or interpretation would be impermissible.

39. We have already noticed that the legislature has not used words of a restrictive or definite nature. It has intentionally made use of the expressions which are quite general and can be construed widely in their common parlance. There is no occasion for this Court to read the word other than the one intended by the legislature in the provisions of Section 2 (g) of the Recovery Act. Wherever the legislature requires, it uses the expressions of definite connotations and consequences, for example, in the Interest Act, 1978, the word 'debt' has been defined under Section 2(c) of that Act by using specific terms of restricted character. It means 'any liability for an 'ascertained sum' of money and includes a debt payable in any kind but does not include a 'judgment debt'. In this definition, the 'ascertained sum' obviously means a sum which has been determined under any methods of the adjudicative process

while, on the other hand, the expression 'payable in kind' is a general expression, again the excluding clause in relation to 'judgment debt' is specific. Such is not the language or the purport of Section 2 (g) of the Recovery Act. Mr. R.F. Nariman, the learned senior counsel appearing for the appellant, while referring to the provisions of Section 19 (8) and Section 19 (11) respectively, of the Recovery Act contended, that these sections clearly postulate that, a non applicant in proceedings before the Tribunal can raise a plea of set off, as well as a counter claim, but where the counter claim is objected to on the ground that it ought not to be disposed off by way of a counter claim, as it is an independent action, then the person raising a counter claim can take leave of the Tribunal for exclusion of such counter claim. With reference to language of these two provisions, it is contended that, the claim like the one raised by the respondent Bank against the appellant, is a claim which cannot be raised in the proceedings before the Tribunal and the Bank ought to have taken independent steps, if any, in accordance with law. On the other hand, Mr. Jaideep Gupta, learned senior counsel for the respondent-Bank argued that, this

argument has no bearing on the matter in controversy before us, in as much as, the claim of the Bank is maintainable within the definition of 'debt' under the Recovery Act.

40. This contention of appellant needs to be noticed only for being rejected. In our detailed discussion above, we have clearly held that, the claim raised by the Bank falls well within the ambit and scope of Section 2 (g) of the Recovery Act and the jurisdiction of the Tribunal cannot be ousted on this ground.

41. Thus, in our opinion, the provisions of Section 2 (g) have to be construed, so as to give it liberal meaning. The general expressions used in this provision will have to be understood generally. Neither there is scope to hold nor is the legislative intent that these provisions should be given a narrower or a restricted meaning. In our considered view, the claim of the Bank relatable to the hypothecated goods was well within the jurisdiction of the Tribunal exercising its power under Section 17 of the Recovery Act.

Applicability of the principles of public accountability on the facts of the present case :

42. Having answered both the questions of fact partially and law against the present appellant, still there is another important facet of this case which cannot be ignored by the Court. It relates to the conduct of the respondent Bank and its officers/officials. The witnesses appearing on behalf of the Bank had stated that, at the stage of appraisal report itself, the Bank had come to know, that respondent Nos. 2 and 3 have a leave and license agreement with the appellant. Despite that, and without proper verification, as it appears from the record, heavy loan was sanctioned and disbursed to the above respondents. Even thereafter, the Bank and its officers/officials appear to have taken no serious steps to ensure that the goods hypothecated to the Bank are not disposed off without its consent. The officers/officials of the Bank, even after knowing about the handing over of the possession of the property including the hypothecated goods to the appellant and having communicated the same to the appellant vide their letter dated 24th August, 1987, made no serious efforts to recover its debt and ensure that the goods are not disposed off, as the suit itself was filed for recovery of the amount on 1st February, 1989 after

serious delay. These facts, to a great extent, are even conformed in the affidavit which was filed on behalf of the Bank by one Shri Kamal Kumar Kapoor as late as on 22nd August, 2009 before this Court. There is no doubt in our mind that the Bank could have protected its interest and ensured recovery while taking due caution and acting with expeditiousness. There is definite negligence on the part of the concerned officers/officials in the Bank. They have jeopardized the interest of the Bank and consequently the public funds, only saving grace being that orders were passed by the competent forum, requiring the appellant to deposit some money in the suit for recovery of more than 22 lac which was filed by the Bank in the year 1989. Even this order was also vacated by the Tribunal vide its order dated 28th December, 2006 wherein it passed the order for refund of the amount. The concerned quarters in the Bank also failed to act despite the advertisement for sale of the hypothecated material given by the appellant on 12th March, 1988, whereafter the machines like CTC is said to have been sold at a throwaway price. All these facts indicate definite negligence and callousness on the part of

the concerned quarters. The legislative object of expeditious recovery of all public dues and due protection of security available with the Bank to ensure pre-payments of debts cannot be achieved when the officers/officials of the Bank act in such a callous manner. There is a public duty upon all such officers/officials to act fairly, transparently and with sense of responsibility to ensure recovery of public dues. Even, an inaction on the part of the public servant can lead to a failure of public duty and can jeopardize the interest of the State or its instrumentality.

43. In our considered opinion, the scheme of the Recovery Act and language of its various provisions imposes an obligation upon the Banks to ensure a proper and expeditious recovery of its dues. In the present case, there is certainly ex facie failure of statutory obligation on the part of the Bank and its officers/officials. In the entire record before us, there is no explanation much less any reasonable explanation as to why effective steps were not taken and why the interest of the Bank was permitted to be jeopardized. The concept of public accountability and performance is applicable to the present case

as well. These are instrumentalities of the State and thus all administrative norms and principles of fair performance are applicable to them with equal force as they are to the Government department, if not with a greater rigor. The well established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office. In the case of State of Bihar v. Subhash Singh [(1997) 4 SCC 430], this Court, in exercise of the powers of judicial review stated that, the doctrine of full faith and credit applies to the acts done by officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose.

44. Inaction, arbitrary action or irresponsible action would normally result in dual hardship. Firstly, it jeopardizes the interest of the Bank and public funds are wasted and secondly, it even affects the borrower's interest adversely provided such person was acting bonafide. Both these adverse consequences can easily be avoided by the authorities concerned by timely and coordinated action. The authorities are required to have a more practical and pragmatic approach to provide solution to

such matters. The concept of public accountability and performance of functions takes in its ambit proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State instrumentalities and/or by the financial institutions. In the case of Centre for Public Interest Litigation & Anr. v. Union of India & Anr. [(2005) 8 SCC 202], this Court declared the dictum that State actions causing loss are actionable under public law and this is as a result of innovation to a new tool with the court, which are the protectors of civil liberty of the citizens and would ensure protection against devastating results of State action. The principles of public accountability and transparency in State action even in the case of appointment, which essentially must not lack bonafide was enforced by the Court. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable both for their inaction and irresponsible actions. What ought to have been done, if not done, responsibility should be fixed on the erring officers then alone the real public purpose of an answerable administration would

be satisfied.

45. The doctrine of full faith and credit applies to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is apposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed. It is known fact that, in transactions of the Government business, none would own personal responsibility and decisions are leisurely taken at various levels (Refer : State of Andhra Pradesh v. Food Corporation of India [(2004) 13 SCC 53].

Principle of public accountability is applicable to such officers/officials with all its vigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, but are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects not only in the decision making process but in the decision as well. Every public officer is accountable for its decision and actions to the public in the larger interest and to the State administration in its governance. It needs to be seen in the

facts and circumstances of the present case, why and how the interest of the Bank has been jeopardized, in what circumstances the loan was sanctioned and disbursed despite some glaring defects having been exposed in the appraisal report. Significant element of discretion is vested in the officers/officials of the Bank while sanctioning and disbursing the loans but this discretion is circumscribed by the inbuilt commercial principles/restrictions as well as that such decisions should be free from arbitrariness, unreasonableness and should protect the interest of the Bank in all events. We are neither competent nor do we wish to venture to examine this aspect, it is for the appropriate authorities in the Bank to examine the matter from all quarters and then to take appropriate action against the erring officers/officials involved in the present case, that too, in accordance with law.

46. For the reasons afore-recorded, we partially allow this appeal and while modifying the order of the High Court to the extent that, the appellants would be liable to pay to the respondent Bank a sum of Rs. 9,63,975/-. (approximate value of the hypothecated stock sold by the appellants) with interest at the rate of 6% per annum on the above sum during the period

from 14th March, 1988, the date of filing of the plaint, to the date of actual realization as originally allowed by the Tribunal.

47. We further direct the Chairman of the Allahabad Bank to examine this case in light of our discussion supra and take appropriate action against erring officers/officials in accordance with law.

48. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

.....J.
[B.SUDERSHAN REDDY]

.....J.
[SWATANTER KUMAR]

New Delhi
May 3, 2010