

CHAPTER IV

RECOVERY MACHINERY
FOR BANK



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Recovery machinery for bank

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CHAPTER - IV

Recovery Machinery for Banks

INTRODUCTION

In this chapter various methods of recovery under different laws are described. When a loan account goes in NPA, bank & FI's starts for recovery of loan amount. The measures available for recovery of due amount of commercial banks under CPC 1908. Where as co-op courts are there for recovery disputes of the co-op banks. Due to lengthy procedure in Civil Court, piles of cases pending in Civil Court. Separate forum called co-op courts were established under MSC Act 1960 for the recovery of due amount of co-op banks. Then also banks & FI's were facing considerable difficulties in recovering dues from borrowers.

Due to delays in the legal processes, a most portion of the funds of banks & FI's is blocked in unproductive assets. Hence, the Tiwari committee recommended setting up of special tribunals for speedy recovery. Thus in 1993 the DRT Act was passed by the parliament & established Debt Recovery Tribunals & Appellate Tribunals for speedy recovery. In this chapter the procedure for recoveries of bank dues are given in short.

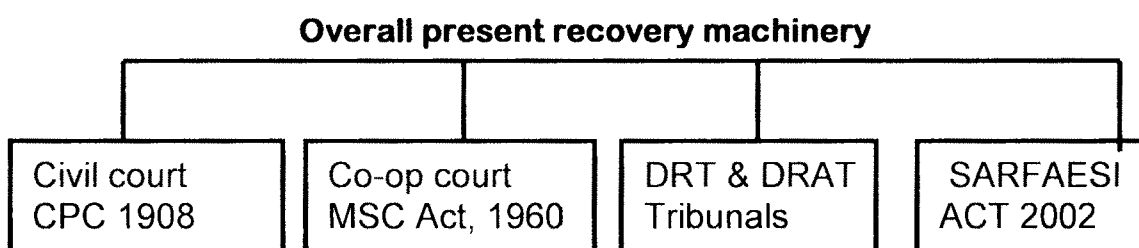


Chart - V

4.1. Civil procedure code 1908

Rule 41 of CPC is related to attachment of property by a bank that has given advances to the borrower, who fails to repay the amount of debt. The bank may try to obtain a decree against the borrower & guarantor. It can also obtain a decree for sale of hypothecated asset & mortgaged properties. According to rule 41 of CPC a decree holder may apply to the court for an order for repayment of money. This provision prohibits the judgment debtor from transferring or charging the property in any way, which is mortgaged with bank. Officer of the court or any person appointed by the court could conduct a sale of property after due notice to the borrower. If the property mortgaged is only collateral security, being hypothecated assets of the borrowers & promissory notes then the banks has two types of remedies.1) The bank may try to obtain a decree against the borrower & guarantor.

2) A bank can also obtain a decree for sale of the hypothecated assets & mortgaged properties.

➤ Procedure

Under section 60 of CPC 1908, the property is liable to attach & sale in execution of decree. Banks can file suits against borrower for attachment of all salable, movable & immovable property belonging to debtor. In civil court suit, documentation, service of summons on defendant, written statement by defendant, hearing, evidence, examination in chief & cross examination etc. is followed according to civil procedure.

The court may at any stage of the proceedings allow either party to amend his pleading. After giving opportunity both the parties to be heard, arguments that are heard, then only court will pass a decree. Where any property is ordered to be sold by public auction in execution of a court's decree, then court proclaims about sale. Notice to the

decree holder & judgment debtor is served in which time & place of sale is mentioned.

The court may in its discretion adjourn any sale here under to a specified day & hour. Thus, decree holders can not sale property without permission of court. Mortgagee of immovable property can not be bid, auctioned without the intervention of court.

The procedure under CPC is very lengthy & time consuming because already there are piles of cases such as partitions suits, succession suits, marriage suits, partnerships suits, election suits & other civil suits are pending. So the recovery of loan through civil court is very lengthy, time consuming, expensive mode of recovery.

4.2. Co -operative societies Act 1960

Introduction: -

This is the another measure before the co-op banks for the recovery of loan amount. A recovery of loans & advances has assumed importance due to heaps of N.P.A. Interpretation of banking has been given in section 5(b) of Banking Regulation Act 1949 as applicable to co-operative societies. This Act gives directions to Urban Co-op Bank as to how banking business should be conducted.

Co-op court is the separate forum created under the co-operative law. This act is applicable in whole Maharashtra. It contains various sections, among which section 91 and section 101 are applicable for recovery of loan amount from the debtors. This Act & co-op courts are only applicable to co-op banks & societies established under this act and not to commercial banks.

➤ **Procedure of sec 91: -**

When co-op bank applies for recovery in co-op court, it sends notices & summons to debtor & sureties. Here, appearances, written statements, affidavits are granted. Examination in chief & cross-examination of bank officer is taken. The Hon. court gives the chance for pleading & arguments of both the parties to the suit before granting any award/order. U/s 91 parties can engage the advocates with the permission of the court. Here burden of proof lies on the bank. It means bank has to prove claim on the borrower. Taking into account both sides' plea, Hon. court issues an award or recovery certificate.

➤ **Procedure of sec 101: -**

Co-op bank can apply also u/s 101 for the recovery of loan to the Registrar. As per procedure, notice is served to the debtor. Here also appearance, written statement, arguments etc. are allowed but no adjournment is granted. Bank should give explanation about the overdue of the loan account to the Registrar. The Registrar should satisfy & think that the amount of overdue is valid or not. If the amount is valid, he gives recovery certificate u/s 101 to the bank.

As soon as the award is granted by the co-op court u/s 91 or the recovery certificate issued by the Registrar, the bank should stop usual practice of debiting interest with monthly rate, but it has to write accounts as per award or recovery certificate.

Even though the rules for attachment & sale are made under co-op act, they are not sufficient for attachment of property. Therefore co-op banks have to take help of the provisions under Civil Procedure Code. Rule 107 of the co-op act gives the details of execution of attachment award.

➤ **Rule 107 :-**

Demand notice is required to be served upon the defaulter. Specific period is given to repay whole amount. If defaulter has failed to repay the amount, he has to face further action of attachment of movable & immovable property & sale thereof. If the defaulter failed to repay the due amount even after legal demand notice, then attachment is necessary. But before seizing property certain rules & practices must be followed by the bank.

The rule 107 (5a) to (n) provides the procedure before seizing property by the banks. Co-op bank can attach the movable properties such as clothing, utensils & food grains kept for daily use, seeds, agricultural implements, instruments of artisan etc. before attaching the property bank should inform the nearest police station.

If the borrower failed to repay the due amount even after serving a demand notice, the bank can attach the movable properties. It should make a list of movable property in the presence of Panch & should give a copy of the attached property to defaulter. According to the rule bank should send 15 days notice to the defaulter before dispose off the property by public auction sale.

If any person takes an objection to attachment, such objection & claim should be heard separately & decided upon merits according to rule 107(19) of MCS rule 1961, the special recovery officer may modify or totally cancel the attachment order after his satisfaction.

Thus the Maharashtra State Co-op Societies Act 1960 provides two procedures for recovery of debts by co-op society's Act u/s 91 & 101. These are two weapons in the hands of co-op banks to dispense with disputes. In section 91 disputes are touching with the management & tried in the co-op court. Aggrieved party may go in Co-op Appellate Court or Civil Court. Section 91 empowers co-op societies & its members to dispense their grievances in co-op court it self. In

Maharashtra the numbers of co-op societies are large, so Co-op Courts have been established to dispense & deal with Co-op disputes. In spite of separating Co-op judicial court, number of cases started filing in co-op courts.

Therefore section 101 was introduced in the act by which the co-op societies can file a complaint against the member before Assistant Registrar to settle the dispute between Co-op Societies & its members. This is based on statement of account of the member. Section 101 is very helpful section to settle the disputes in relation to advances & recovery. Later the Urban Co-op Banks were incorporated in the section 101. The Decree issued by co-op court or Certificate issued by Assistant Registrar is similar to that of civil court.

4.3. DRT & DRAT

➤ Introduction: -

This is third phase in the recovery of debts. The urban co-op banks, commercial banks & financial institution are catering largely to supply finance for trade industries, agriculture & other purpose. Banks & financial institutions, at present phasing considerable difficulties in recovering dues from the clients & enforcement of security charged to them, due to the delays in the legal processes & a significant portion of the funds of the banks & financial institutions is blocked in unproductive assets i.e. N.P.A. The recommendations of C.F.S. in regard to introduction of prudential norms for the banking system & speeding up the process of recovery were accepted. These norms are already stated in the chapter no. 3 titled issues in Indian financial system.

➤ **Speeding the process of recovery**

Banks & Financial Institutions (FI's) at present face considerable difficulties in recovery of dues from the client & enforcement of security charged to them due to the delays in the legal processes. The significant portion of the funds of the banks & FI's is blocked in unproductive assets. Banks also incurred substantial amount of expenditure by way of legal charges, which increases to their overheads.

The high level committee was appointed by the Govt. of India under the Chairmanship of Shri. Tiwari to examine all aspects in relating to the structure, organisation, functions & procedure of financial systems. This committee made some observations & recommendations in the matter of difficulties faced by the banks & financial institutional delays in legal processes.

In 1981 Tiwari Committee had recommended setting up of special recovery tribunals for recovery of dues of banks & financial institutions. While considering the problem of speedy recovery of defaulted loans & advances of the banks financial, institutions, the committee on financial system recommended that immediate steps should be taken to implement the recommendations of the Tiwari Committee.

As per the recommendations of Tiwari Committee, the Government of India passed the Recovery of Debts Due to Banks & Financial Institutions act 1993 (DRT Act). Under this act special debt recovery tribunals were setup for speedy recovery. This act extends to the whole of India except the states Jammu & Kashmir.

➤ **Applicability of co-op banks**

Clause (d) of sec 2 defined the expression 'Bank' which includes the banking company as define in sec 5(c) of the BR Act 1949. Since by virtue of modification of the said definition by sec 56 of the BR Act in its application to the co-op banks because the expression banking

includes co-op banks also. Thus, all the provisions of the DRT act are also applicable to co-op banks.

The central Govt. by notification establishes one or more tribunals which are known as “Debts Recovery Tribunals” to exercise jurisdiction, power & authority under this act [sec 3].

The central Govt. by notification establishes one or more appellate tribunal, which is known “Debt Recovery Appellate Tribunal” to exercise jurisdiction, power & authority under this act [sec 8].

Under this act a creditor bank can apply for the due amount in the D.R.T. All the applications in DRT must be written in English language. When the due amount of a creditor is more than 10 lakhs then only he can apply in the DRT.

➤ **Features of DRT act: -**

- 1) This act is mainly introduced for expedition recovery of debts of banks & financial institutions.
- 2) This act is also applicable to state level financial institutions.
- 3) It has provision for appeal before the appellate tribunal, which should file within 45 days from the date of receipt of copy of order from the DRT.
- 4) It also has the provision of preferring an appeal to the High Court & Supreme Court under section 226 & 227 of the constitution against the order of Recovery Tribunal.
- 5) The act makes it compulsory to deposit 75 % of due amount of debt while filing an appeal. (this amount of pre-deposit can be reduced in the discretion of DRT.)
- 6) One more important thing is that, it has made specific time i.e. 6 months from the date of receipt of application within which the application must be disposed off.
- 7) This act compelled the Tribunal to initiate process within one month from the date of receipt of application.

- 8) Limitation Act 1963 is applicable for an application made before tribunal.
- 9) Tribunal got a power to transfer pending recovery cases before various courts.
- 10) It has given permission to authorised official of banks or financial institutions to act as presiding officer.

➤ **Procedure of debt recovery under DRT act**

- ❖ An application to recover any debt from any person by a bank or FI's has to be made to the Tribunal within the local limits of jurisdiction-
- ❖ The application to recover debts shall be made in the prescribed form accompanied by documents, other evidence & required fee.
- ❖ On receipt of application, the Tribunal shall issue summons to the defendants to show cause within 30 days of the service of summons as to why the relief prayed for should not be granted?
- ❖ The Tribunal may pass an order on the application to meet the ends of justice after giving the opportunity of being heard to the parties.
- ❖ The Tribunal has the power to make an interim order (by way of injunction or stay) against the defendant & debar from transferring, alienating or otherwise dealing with dispersing of property belonging to him without the prior permission of the Tribunal.
- ❖ The Presiding Officer, on the basis of the order passed by the Tribunal shall issue a certificate under his signature to the recovery officer for recovery of debt amount specified in the certificate.

- ❖ The application made to the tribunal for recovery of debts shall be disposed off within 6 months from the date of receipt of application.

➤ **Appeal to the Tribunal [section 20]**

- ❖ Any person aggrieved by an order made by the tribunal has been given the freedom to prefer an appeal to an appellate Tribunal having jurisdiction in the matter.
- ❖ But the appeal should be made within 45 days from the date on which a copy of order by the Tribunal has made available.
- ❖ The appeal filed before the D.R.A.T. must be disposed within the period of 6 months from the date of receipt of the appeal.
- ❖ The recovery officer shall recover the amount specified in the certificate by following modes: -
 - a) Attachment & seal of movable or immovable property of defendant.
 - b) Arrest defendant & his detention in prison.
 - c) Appointing a receiver for the management of movable or immovable properties of the defendants.
- ❖ Once the certificate is issued, the recovery officer recovers the amount of debt by any one or more of the modes provided under this act.
- ❖ A copy of notice needs to be forwarded to the defendant at his last known address.
- ❖ The Recovery Officer may amend, revoke any notice under this section & can extend the time for making the demanded payment.
- ❖ The recovery officer may apply to the court in whose custody the money is there belonging to the defendant for payment to him.

➤ **Condition of deposit of amount of debts due on filing of appeal:**

The appeal preferred against the order of the DRT by any person shall not be entertained by the DRAT, unless such person has deposited 75% of the amount of debt determined by the Tribunal. But DRAT has been vested with the power to waive or reduce the amount to be deposited by recording reasons in writing.

➤ **Conclusion**

Above all three legal machinery provide various measures through which co-op banks can recover the due amount which are in NPA account. As in every field of litigation bank cases also took years & decades. If in some cases lower court gave the decision, appeals to higher courts are common. During this period the borrower can create third party interest in the asset & can sale a part of valuable security. Thousands of suits of banks are pending in different courts of the country.

Under provisions of the section 69 of the transfer of properties act, mortgagee (bank) can take possession of mortgaged property & seal the same without intervention of the court, but only in case of English Mortgage & where there is specific provision in mortgage deed & the mortgaged property is situated in selected towns only. There is no specific provision in respect of hypothecation .So new law was needed to washout these drawbacks. Therefore government of India appointed Andhyarujina Committee to draft a bill for regulation of securitisation & asset reconstruction & enforcement of security interest. This Act is really a requirement of present Indian finance sector.

REFFERANCES

1. Prof. K. Elumalai – “An Article on ‘Machinery available for Recovery of Bank Loans” in Programme Report on Recovery Management & SARFAESI ACT. - Published Vaikunthbhai Mehta Institute Pune. June 2005. Pp 47 to 57, 39 to 44.
2. Joshi G.S.- “Synoptic Note on Management of Recovery of Co-op Banks” - Published by Anjali Prakashans.Pune-1st edition 2006 - Pp 2 to 8.
3. Adv. Shah Santosh – “NPA - Legal Remedies” workshop Paper Published by Shivaji University Kolhapur 2003.Pp.247 to 255.
4. Umarji M.R.- “Law & Practice Relating to SARFAESI ACT Recovery of Dues Due to Banks & FI’s” - 3rd edition 2004 - Published by Taxman Allied services Pvt. Ltd New Delhi. - Pp 283 to 303.
5. Prof K. Elumalai – “Recovery of debts due to Banks & FI’s Act 1993—Published by Vaikunthbhai Mehta Institute Pune. – June 2005 Pp.—32 to 44